

# **Federal Election Commission**

## **Annual Report 1980**



Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

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**Frank P. Reiche**, Vice Chairman  
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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 1, 1981

The President of the United States  
The Congress of the United States

Dear Sirs:

We submit for your consideration the sixth annual report of the Federal Election Commission, as required by the Federal Election Campaign Act of 1971, as amended. The 1980 Annual Report lists the Commission's recommendations for legislative action and describes the activities performed by the Commission in carrying out its duties under the Act. We hope you will find this a useful summary of the Commission's efforts to administer the Act during 1980.

Respectfully,

A handwritten signature in black ink, reading "John Warren McGarry". The signature is written in a cursive, flowing style.

JOHN WARREN MCGARRY  
Chairman

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In 1980, the Federal Election Commission presided for a second time over the public financing of Presidential elections and, also for the second time, the Commission implemented a comprehensive set of Amendments to the Federal Election Campaign Act of 1971 (the Act). These two events are the focus of this year's *Annual Report*; they underlie a new set of legislative recommendations presented in Chapter One. Both substantive and technical in nature, the recommended changes aim at reducing the burdens on political committees while preserving the core of the Federal campaign finance law.

Chapter Two examines the 1980 Presidential elections. Expanded outreach to candidates, timely primary matching fund certifications and audits, increased disclosure of campaign finance data — all these contributed to a successful public funding program in 1980. Statistical data on candidates' qualified campaign expenses and public funding payments and repayments are not included since they are not available at this writing. They will be the subject of a separate report to Congress, as required by law, once the post-election audits have been completed.

Chapter Three reports on the Commission's administration of other aspects of the campaign finance law, noting particularly the impact of the 1979 Amendments on Commission programs. Within two months after President Carter signed the Amendments, the Commission translated mandated changes into functioning programs.

Chapter Four describes the Commission's internal administration, including the appointment of new officers, steps taken to trim the budget, an internal program review and the implementation of the labor/management agreement.

Using an approach adopted in the 1979 *Annual Report*, this year's report describes only new programs and changes that occurred in 1980. Statistical details, such as the operation of the

Public Records and Public Communications Offices, are included in Appendix 5. Descriptions of the Commission's organization and ongoing operations may be found in the 1977 and 1978 *Annual Reports*.

The Federal Election Campaign Act requires the Commission to include in its annual report "...recommendations for any legislative or other action the Commission considers appropriate..." Section 438(a)(9). The following recommendations reflect the Commission's experience in administering the 1979 Amendments to the election law and in administering the public financing program in two Presidential elections. The Commission believes these suggestions will make the election law more workable and more acceptable by political committees and the public. Continuing to evaluate its administration of the election law, the Commission may offer additional recommendations later this year.

## Reporting

### General Waiver Authority (2 U.S.C. §436)

In the past, there have been instances when the Commission may have wished to suspend the reporting requirements of the law in cases where reports or requirements were excessive or unnecessary. In the 1979 Amendments to the Act, Congress repealed 2 U.S.C. §436 which provided the Commission with a limited waiver authority. That provision was unclear and of limited use; nonetheless, to reduce needlessly burdensome disclosure requirements, the Commission should have authority to grant general waivers or exemptions from the extensive reporting, recordkeeping and organizational requirements of the Act. Each proposal for a general waiver would, of course, be submitted to Congress in the form of a regulation subject to legislative review. If Congress does not grant the Commission general waiver authority over the reporting requirements of the law, it should consider changing specific provisions that have proven burdensome. The Commission suggests the following changes: (1) a candidate's principal campaign committee existing solely to extinguish debts from a previous campaign should be permitted to file semiannual reports even in an election year, provided that, if the candidate is currently seeking election, he or she has authorized a new principal campaign com-

mittee, which is reporting for that election and (2) the principal campaign committee of a candidate for the office of President should not be required to file pre- and post-general election reports if the candidate is no longer seeking election.

### Point of Entry (2 U.S.C. §432(g))

The Commission recommends that it be the sole point of entry for all disclosure documents filed by Federal committees. A single point of entry would eliminate any confusion about where candidates and committees are to file their reports. It would assist committee treasurers by having one office with which to file, correspond and ask questions. At present, conflicts may arise when more than one office sends out materials, makes requests for additional information and answers questions relating to the interpretation of the law. A single point of entry should also reduce the cost to the Federal government of maintaining three different offices, especially in the area of personnel, equipment and data processing.

The Commission has authority to prepare and publish lists of nonfilers. It is extremely difficult to ascertain who has and who has not filed when reports may have been filed at or are in transit between two different offices. Separate points of entry also make it difficult for the Commission to track responses to compliance notices. Many responses and/or amendments may not be received by the Commission in a timely manner, even though they were sent on time by the candidate or committee. The delay in transmittal between two offices sometimes leads the Commission to believe that candidates and committees are not in compliance. A single point of entry would eliminate this confusion. If the Commission received all documents, it would transmit on a daily basis file copies to the Secretary of the Senate and the Clerk of the House, as appropriate. The Commission notes that the report of the Institute of Politics of the John F. Kennedy School of Government at Harvard University, *An Analysis of the Impact of the Federal Election Campaign Act, 1972-78*,

prepared for the House Administration Committee, recommends that all reports be filed directly with the Commission (Committee Print, 96th Cong., 1st Sess., at 122 (1979)).

#### **Authorized Presidential Committees** (2 U.S.C. §434(a)(3))

To minimize reporting burdens, Congress may wish to permit authorized Presidential committees filing reports on a monthly basis to revert to quarterly filing, where the candidate is no longer seeking nomination or election to the office of President and has so notified the Commission in writing. In addition, Congress may wish to allow such committees to file semiannual reports in a nonelection year.

#### **48-Hour Reports** (2 U.S.C. §434(a)(6))

Require recipient committee to report in one notification contributions of \$1,000 or more received after the close of books on the 20th day before the election through the 10th day before the election. Contributions of \$1,000 or more received after the 10th day would be reported within 48 hours.

## **Contribution and Expenditure Limitations**

#### **Election Period Limitations** (2 U.S.C. §441a)

The contribution limitations are structured on a "per-election" basis, thus necessitating dual bookkeeping or the adoption of some other method to distinguish between primary and general election contributions. The Act could be simplified by changing the contribution limitations from a "per-election" basis to an "annual" or "election-cycle" basis. If an annual limitation is chosen, contributions made to a candidate in a year other than the calendar year in which the election is held should be considered to have been made during the election year. Thus, multicandidate committees could give up to \$10,000 and all other persons could give up to \$2,000 to an authorized committee at any point during the election cycle.

#### **Contributions by Minors** (2 U.S.C. §441a)

The Act does not stipulate at what age a minor child may make contributions. Presently, the Commission is forced to rely on subjective criteria such as whether "the decision to contribute is made knowingly or voluntarily by the minor child." Congress should establish an age below which contributions by children would be considered to have been made by the parent and subject to the parent's \$1,000 contribution limitation.

#### **Contributions to Draft Committees** (2 U.S.C. §441a)

Consideration should be given to the contribution limitations that apply to draft committees. Since the \$1,000 limitation on contributions by persons other than multicandidate committees applies only to candidates, a person may give up to \$5,000 per year — the limit applicable to "other political committees" — to a draft committee. Precisely this situation was presented in Advisory Opinion 1979-40. Congress may wish to amend the statute to make the \$1,000 limitation, rather than the \$5,000 limitation, applicable to contributions to political committees whose purpose is to influence a clearly identified individual to become a candidate.

Although the limitation on contributions by multicandidate committees to candidates or to draft committees is \$5,000, multicandidate committees, as well as other persons, may make two contributions toward the nomination of an individual — one contribution to a draft movement and, if the individual later becomes a candidate, another contribution to the candidate's authorized committee. Accordingly, Congress may wish to consider amending the Act to provide that a person who has contributed to a draft committee with the knowledge that his or her contribution will be expended to draft a clearly identified individual will, for the purposes of the contribution limitations, be considered to have made a contribution to a "candidate." If that individual should become a candidate, the contributors to the draft movement would be eligible to give to the candidate's

authorized committees only to the extent their earlier aggregate contributions did not exceed the "candidate" limits.

#### **Earmarked Contributions (2 U.S.C. §441a(a)(8))**

Section 441a(a)(8) states that contributions made on behalf of a candidate through an intermediary or conduit shall be considered contributions to the candidate by the original donor. The statute should be amended to make this provision applicable to contributions earmarked to political committees.

#### **Foreign Nationals (2 U.S.C. §441e)**

Section 441e should be revised to state whether this section reaches U. S. corporations owned by foreign nationals, subsidiaries of foreign corporations and trade associations with members who are foreign nationals or foreign corporations.

#### **Voluntary Services (2 U.S.C. §431(8)(B))**

The Act places no limit on the services that a professional may donate to a candidate. For example, a professional entertainer may participate in a concert for the benefit of a candidate without the proceeds of that concert counting toward the entertainer's contribution limitations. Congress may wish to circumscribe the use of volunteer professional services when they are donated solely for fundraising rather than for actual campaigning. A similar question is raised when an artist donates artwork to a campaign to be used for fundraising or to be disposed of as an asset of the campaign.

#### **Trade Association Solicitation Approval (2 U.S.C. §441b(b)(4)(D))**

Trade association political action committees must obtain the separate and specific approval of each member corporation to solicit their executive and administrative personnel. Some trade associations have thousands of members, and it is a considerable administrative burden to obtain approval to solicit every year. The one-year limitation should be removed, and the trade association should be allowed to solicit until the corporation revokes its approval.

## **Presidential Elections**

#### **Repayments to the Fund (26 U.S.C. §9007(b))**

Repayments under the Presidential Primary Matching Payment Account Act (Chapter 96, 26 U.S.C.) are credited to the Presidential Election Campaign Fund, while repayments under the Presidential Election Campaign Fund Act (Chapter 95, 26 U.S.C.) are credited to the general fund of the Treasury. All repayments should be credited to the Presidential Election Campaign Fund so that dollars checked off by taxpayers for the Fund do not indirectly end up in the general fund.

#### **Use of Contributions Matched by Federal Funds (26 U.S.C. §9038(b)(2)(B))**

Section 9038(b)(2)(B) requires the repayment of any matching funds used for any purpose other than "...to restore funds...which were used, to defray qualified campaign expenses." This provision requires the repayment of an amount equal to any expenditure from matching funds or private contributions made for nonqualified campaign expenses. (See 11 CFR 9038.2(a)(2).) The Congress may wish to more clearly state in §9038(b)(2)(B) that a candidate who accepts public funding may not make expenditures from public funds or private contributions for other than qualified campaign expenses.

#### **Qualified Campaign Expenses (26 U.S.C. §§9002(11) and 9032(9))**

Chapters 95 and 96 of Title 26 of the Internal Revenue Code contain different definitions of "qualified campaign expense." Chapter 95 defines a "qualified campaign expense" to mean an expense incurred to further the election of a Presidential candidate. Chapter 96 defines "qualified campaign expense" to mean an expense incurred in connection with a campaign for nomination to the office of President. The Commission recommends that the definition contained in Chapter 96 be incorporated into Chapter 95.

Also, the second sentence of the paragraph following 26 U.S.C. §9002(11)(c) should be



clarified to indicate whether it incorporates the "coattails provision" (2 U.S.C. §431(8)(B)(xi)) or the limitations on "support" of other candidates by a principal campaign committee (2 U.S.C. §432(e)(3)(B)).

#### **Public Funding for Independent Candidates**

(26 U.S.C. § 9002(2), 9003 and 9008)

Congress should consider clarifying whether or not an independent candidate, who is not a new party candidate, is eligible for post-election public funding in the general election.

#### **State Spending Limits**

(2 U.S.C. §441a(b)(1)(A))

The Commission has observed during the 1976 and 1980 primary election cycles that candidates and their respective principal campaign committees have expended heavy resources in an attempt to observe the State-by-State spending limitations contained in 2 U.S.C. §441a(b)(1)(A). The Commission has also spent a considerable amount of its audit resources in verifying compliance with these State limitations. In the process, it has uncovered a number of difficulties. First, it has been difficult to differentiate between expenses that were "national" in impact and expenses that were targeted to a specific State(s). For example, how does one categorize nationwide media broadcasts, nationwide mailings and the distribution of campaign literature which addresses issues of national interest rather than issues pertaining to a specific State(s).

Additionally, it has been difficult to determine how to reasonably attribute travel costs to a specific State(s) when a candidate and support staff travel throughout the United States. Finally, it has been difficult to determine how to reasonably attribute to a specific State(s) the costs of producing and airing television spots, especially in light of cable television and its penetration into multistate markets.

The areas mentioned above are but a few of the practical difficulties encountered when one attempts to attribute the costs associated

with a nationwide Presidential campaign to specific States. The Commission has also found that, with a few exceptions (Iowa, New Hampshire and Maine), candidate expenditures have not approached the State limits. The Congress may, therefore, wish to remove the State-by-State limitations and retain the overall expenditure limitation, with an amendment to incorporate the present 20 percent fundraising exemption into the overall limit. (See the 1979 *Annual Report*, page 40, for a detailed discussion of a fundraising exemption recommendation.)

#### **Public Funding of Federal Candidates by States** (2 U.S.C. §431(8) and (9))

At least one State has established a public funding scheme in which State tax money is distributed to State party committees, which in turn have discretion over the amount each candidate for office in that party should receive. Congress may wish to consider excepting these payments from the definitions of "contribution" and "expenditure" so that the party is not a contributor and so that these amounts do not apply to §441a(d) limits.

#### **Entitlement of Eligible Candidates to Payments** (26 U.S.C. §9004(a)(2))

Under §9004(a)(2), a minor or new party Presidential candidate who received more than 5 percent of the popular vote would be eligible for pre-election funding in the next Presidential general election. If the candidate did not run again, the party's new nominee would be eligible for such funding. If the candidate ran in the next election as an independent or the candidate of yet another new party, both the candidate and his or her old party would be eligible for pre-election funding in the next election. Congress may want to eliminate the opportunity for such double funding.

#### **Recovery of Public Funds** (26 U.S.C. § 9010(b) and 9040(b))

Sections 9010(b) and 9040(b) should be amended to clarify that the Commission may seek repayments of amounts determined to be

repayable in the context of enforcement proceedings and audits under sections other than 9038. As currently drafted, those sections are confusing since they do not reference the Title 2 enforcement procedures, which may uncover payments improperly made, or the other provisions permitting Commission audits.

#### **Deadline for Consideration of Initial Matching Fund Certification (26 U.S.C. §9036)**

In order to allow the Commission sufficient time to adequately verify the initial threshold submission to establish eligibility for matching funds, the 10-day period for processing should be increased to 20 days.

### **Commission Duties, Powers and Authorities**

#### **Number of Legislative Days for Regulation Review (2 U.S.C. §438(d))**

The 1979 Amendments contained a provision reducing the number of legislative days for Congressional review of Commission regulations from 30 days to 15. This reduction was only applicable, however, to the regulations written to implement the 1979 Amendments. Congress should shorten the period for review of all Commission regulations to 15 legislative days.

In addition, two different standards currently apply to Congressional review of Commission regulations because two different definitions of "legislative day" are provided under Title 2 and Title 26. In Title 2, legislative days are counted separately in each House of Congress. In Title 26, legislative days are only counted when both Houses are in session. The Title 26 provision should be revised to match the Title 2 provision, thus avoiding unnecessary delay in regulation review.

#### **Judicial Review (2 U.S.C. §437h; 26 U.S.C. §§9010, 9011, 9040 and 9041)**

The Act contains different judicial review provisions which Congress should consider conforming to each other. As noted by the Court of Appeals for the District of Columbia Circuit, no

apparent reason exists for the different review provisions in Title 2 and in Chapters 95 and 96 of Title 26. This anomaly creates difficulties for the courts because cases brought under one Act often also involve questions relating to the other Acts. See *Republican National Committee v. Federal Election Commission* (case brought under both 2 U.S.C. §437h and 26 U.S.C. §9011(b)). The requirement of §437h that cases be heard by the courts of appeals sitting *en banc* has been noted by the Courts of Appeals for the District of Columbia Circuit, the Fifth Circuit and the Ninth Circuit as presenting great difficulties. The *en banc* requirement should be repealed and Congress should establish a single judicial review provision applicable to all three Acts.

#### **Revolving Fund (2 U.S.C. §438)**

Although the FEC charges fees for publications and photocopies of documents provided to the public upon request and pursuant to the Freedom of Information Act, none of the monies collected reimburse the FEC for resources used. Instead, the money is transferred to the U. S. Treasury. For the fiscal year ended September 30, 1980, the FEC collected and transferred \$37,342.73 to the Treasury (the miscellaneous receipts account). This amount represented fees derived from selling Commission publications and photocopies of documents to the public. In order for the FEC to receive reimbursements for the documents it provides, a "revolving fund account" must be authorized by law. According to the *Treasury Fiscal Requirements Manual*, Congress would have to authorize a revolving fund account to finance a continuing cycle of operations in which expenditures would generate receipts and the receipts would be available for new expenditures. In addition, costs awarded to the Commission in litigation (e.g., printing, but not civil penalties), should be payable to the revolving fund.

#### **Comment Period for Advisory Opinions (2 U.S.C. §437f(d))**

The 1979 Amendments provide that advisory

opinion requests submitted by candidates or their committees within 60 days of an election must be answered within 20 days. However, the Act sets a 10-day public comment period for all requests. This comment period should be shortened to five days for requests under the 20-day requirement to give the Commission sufficient time to fully consider and incorporate comments received.

## Registration

### Names of Committees (2 U.S.C. §432(e))

Under Section 432(e)(4), authorized committees must include the candidate's name in the name of the committee. Separate segregated funds must include the name of their connected organization in their name under Section 432(e)(5). The concept behind these requirements is to enable the public to know whom these committees represent. However, many political committees connected with the organization are not covered by these provisions, even though the public has the same need to know.

"Draft" committees, so called "dump" committees and "delegate" committees should also be required to include the name of the person or candidate they support or oppose in their name, with an appropriate reference to the nature of the committee, e.g., "draft," "delegate" or "dump." In addition, other political committees which have connected organizations or sponsors but which are not segregated funds should be required to include the name of their parent organization in the committee's name.

No committee should be able to use the name of a political party in its name unless it is an official party committee. Similarly, no committee should be able to include the name of a Federal office in its name unless it is an authorized committee.

## Other Statutes

### Regulatory Flexibility Act (Pub. L. 96-354)

Congress should exempt the Federal Election Commission from the requirements of the Regulatory Flexibility Act. None of the Commission's regulations could have a significant impact on a substantial number of small businesses due to the nature of the Commission's jurisdiction, which mainly extends to political committees. The Commission is therefore required to comply with the Regulatory Flexibility Act in a negative fashion, spending time and resources repeatedly asserting that no effect on small businesses will result from Commission rulemaking. A far simpler solution would be to exempt the Commission from these requirements.

### Privacy Act of 1974 (Pub. L. 93-579)

The Commission should be exempted from its duty to comply with the accounting requirements of 5 U.S.C. §552a(c) to the extent that the section requires an accounting of all disclosures maintained on the public record. The Commission has a reading room to which members of the general public may come and inspect microfilm copies of public reports. Placing such documents on the public record is a routine use of such materials. An exemption from the accounting requirements would not contravene the principles of the Privacy Act since the individuals involved are those running for office or contributing to candidates for Federal office. Congress has determined that in this situation the public's need to know the financial activities of political committees outweighs any privacy interest such individuals may have in this area.

## Technical Amendments

### 26 U.S.C. §527(f)(3)

The cross-reference in 26 U.S.C. §527(f)(3) should be changed from "section 610 of Title 18" to "section 441b of Title 2."

**Gender Specific Language**

Gender specific language should be eliminated from the statute wherever it appears. Examples include §§439a, 441a(a)(7), 441b(b)(3)(C), 441f, 441h, 442, 9002(11)(a), 9012(b)(2), 9035, etc.

**Definitions (2 U.S.C. §431)**

The 1979 Amendments changed the numeration of the definition subsections in 2 U.S.C. §431 from letters to numbers. As a result of this change, citations to this section have numbers following numbers, e.g., 2 U.S.C. §431(8). Such citations differ from traditional citation form and therefore appear incorrect and can be awkward to cite orally. The numeration should be changed to lower case letters.

The Commission certified \$29,440,000 in public funds to each major party nominee. The candidates financed their Presidential general election campaigns with this money.



Insights gained from the 1976 Presidential elections and two years' extensive planning enabled the Commission to administer public funding of the 1980 Presidential elections with greater ease and efficiency than in 1976. The Commission certified more primary matching fund payments than in 1976 and completed audits much more rapidly.

This chapter opens with a description of the Commission's monitoring of public funding and includes an explanation of why certifications proceeded more efficiently and audits more quickly than in 1976. The chapter also examines the Commission's 1980 efforts to provide the public with financial information on the Presidential elections. Finally, the chapter discusses several legal issues that emerged from advisory opinions and litigation.

### Primary Matching Fund Program

#### Certifications<sup>1</sup>

Although there were fewer publicly funded candidates this year, more money was certified than in 1976: the Commission certified \$24,877,959 to 15 candidates in 1976; in 1980, the Commission certified \$31,337,971 to 10 candidates.<sup>2</sup> Additionally, new certification procedures and the use of computerized programs to verify matching fund requests helped facilitate the certification process.

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<sup>1</sup> The Commission certifies matching funds to eligible Presidential primary candidates. They receive public funds to match small contributions of money (e.g., checks) from private contributors. Loans, cash contributions, in-kind contributions and contributions from committees are not matchable. To be eligible for matching payments, a candidate must first raise more than \$100,000 in amounts exceeding \$5,000 from each of 20 States. Up to \$250 of an individual's contribution may be matched with Federal funds. Also, a candidate must agree to limit expenditures to \$10 million plus a cost-of-living adjustment. In 1980, this limit was \$14,720,000. (See Appendix 9.)

<sup>2</sup> As of April 15, 1981. See Appendix 8 for amounts certified to each candidate.

*Certification Procedures.* Streamlined certification procedures for matching fund submissions<sup>3</sup> enabled the Commission to certify funds as quickly as in 1976 (within four days) while investing less staff time in the process. Every two weeks the Commission considered candidates' requests for matching funds. In most cases, candidates received payment within the same week of their request.<sup>4</sup>

Because of this brief turnaround period, however, the Commission could not verify the accuracy of matching fund requests until after the Treasury had paid the candidates. To avoid certifying matching funds for an amount greater than that to which the candidate was entitled, the Commission adopted a holdback procedure. In case of possible errors and omissions on requests for matching funds, the Commission automatically held back 15 percent of the amount candidates requested on their first four requests. After certification, each matching fund request was verified to determine the exact amount to which the candidate was entitled. If the Commission had held back too much or too little, adjustments were made to the candidate's

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<sup>3</sup> A matching fund submission is the request for matching fund payments that the candidate submits to the Commission. A matching fund submission contains a list of matchable contributions, alphabetized by contributor name, and includes each contributor's address and the amount of each contribution. The submission also includes a photocopy of each contributor check (or other written instrument). These contributions must be submitted in accordance with the *FEC Guideline for Presentation in Good Order*, which gives complete instructions on the preparation of matching fund submissions.

<sup>4</sup> The Commission accepted matching fund requests every other Monday and considered resubmissions (contributions previously rejected) on alternate Mondays. Upon receipt of matching fund requests, the Audit Division immediately prepared certification documents which, on Tuesdays, were reviewed by the Staff Director and circulated to the Commissioners for their approval. If a Commissioner raised an objection, the Commission considered and voted on the matter in an open-session meeting held Thursday morning. That same day the Commission hand-delivered to the Secretary of the Treasury letters authorizing payments to the candidates. Certified funds were quickly transferred from the Presidential Primary Matching Account to campaign accounts.

next certified payment. On subsequent requests, the holdback percentage was based on the actual error rate on the previous four submissions, as determined by Commission auditors.

*Verification Procedures.* To determine the actual amount of matchable contributions, the Audit Division evaluated matching fund submissions to see if they met the requirements for matchable contributions. For a number of reasons, verifications of matching fund submissions proceeded more efficiently in 1980 than they had in 1976. First, a computer sampling technique reduced time and money spent in the verification process. Developed by an outside accounting firm and programmed, in part, by the Commission, the technique was not available in 1976, when Commission auditors manually verified primary matching fund submissions without computer assistance, a lengthy and tedious process. The statistical sampling technique eliminated the need to review and verify each contribution listed on a matching fund submission. Instead, Commission auditors reviewed only a sample group of contributions identified by the sampling program. If they discovered a high rate of nonmatchable contributions in the sample, the program provided a larger sample of contributions, which auditors then verified. This technique resulted in statistically valid verifications of matching fund requests while reducing time invested in the process.

Computer technology assisted the verification process in another way as well. In 1980, several committees provided computer tapes of their matching fund submissions. These tapes enabled the Commission to reduce the time normally required for entering into the computer data contained in the submissions.

Computerized data also gave the Commission immediate access to the status of matching fund submissions. A program could produce, for each candidate, the amount certified to date; the amount of matchable and unmatchable contributions submitted; and the number of

submissions and resubmissions received. The Commission used this data to keep track of overall matching fund activity.

### Audits<sup>5</sup>

The Commission completed and publicly released reports on five post-primary audits by December 1980; the remaining five audits were scheduled for release by Spring of 1981.<sup>6</sup> This contrasted markedly with 1976, when post-primary audits extended over two years. What accounts for this difference?

Experience gained from the 1976 elections helped facilitate the 1980 audit process. Many individuals who had participated in the 1976 audits served on the staffs of the Commission and various Presidential campaigns. They applied their practical knowledge to the 1980 audit process. This alone, however, cannot explain the difference between the 1976 and 1980 audits. Other factors were at work, as well.

*Outreach.* The Commission recognized that one way of reducing the time required to audit Presidential campaigns was to prevent problems from developing in the first place. To this end, the Commission initiated an outreach program to help publicly funded campaigns better understand and comply with the election law. The Commission first provided Presidential committees with the *Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing*. The *Manual*, distributed early in 1979, set out guidelines for accounting, budgetary and reporting systems. Auditors noted that, in general, those campaigns that relied on the *Manual* had fewer problems with recordkeeping and reporting. Secondly,

<sup>5</sup> The Presidential Primary Matching Fund Account Act requires the Commission to conduct a thorough examination and audit of the campaign finances of each publicly funded candidate. The audit determines whether a candidate must repay any money to the matching payment account.

<sup>6</sup> See Appendix 8 for chart showing post-primary audit reports that have been released to the public.

recognizing the need to establish good communication between the campaigns and the Commission in the early stages of the election cycle, the Commission assigned a team of auditors, reports analysts and attorneys to work with each Presidential committee that was eligible for public funds. Members of the support team became familiar with the unique needs and problems of the particular campaign they assisted. They were available to answer questions, resolve problems and, in general, to help committees establish reliable reporting and accounting methods.

*Threshold Audits.* As another measure taken to help Presidential candidates comply with the election law, the Commission established procedures for conducting threshold audits of each campaign receiving public funds. Commission staff conducted the threshold audit as soon as a committee had established matching fund eligibility, enabling the committee to correct problems at an early stage in the campaign. However, because candidates did not submit letters stating that they had fulfilled eligibility requirements until late 1979 and early 1980, well after their campaigns had begun, threshold audits were delayed and took place much later than anticipated. In many cases, committees had already amassed extensive records requiring Commission staff to spend more time on this preliminary audit than had originally been contemplated. Nevertheless, the program proved beneficial. Upon completion of fieldwork at campaign headquarters, Commission auditors held an "exit interview" with campaign staff. During this conference, Commission staff discussed the committee's bookkeeping and accounting methods, pointed out deficiencies and recommended improvements. For example, auditors suggested modifying methods for allocating expenditures against State-by-State limits. Campaign workers were free to act upon the recommendations immediately. Subsequently, the Audit Division prepared an interim audit report, which generally repeated recommendations offered informally at the exit interview. After a thorough legal review by

the General Counsel's Office and approval by the Commissioners, the interim report was forwarded to the committee for inspection. The last phase of the threshold audit came when the Commission released the final threshold audit report to the public.

*Post-Primary Audits.* Procedures established for processing audits played a major part in the Commission's rapid completion of the post-primary audits. Under these new procedures, originally recommended by the Arthur Andersen study of 1979,<sup>7</sup> the Commission established, and adhered to, a timetable of internal deadlines for each stage of the audit process — from fieldwork to legal review to Commission approval.

Furthermore, the Commission changed its policy of granting unlimited extensions to Presidential committees for responding to the interim or final audit report. In 1976, Presidential committees had frequently requested, and been granted, extensions of time, during which they searched for additional documentation needed to prove that certain expenses were qualified campaign expenses. Since, under the campaign law, matching funds are available only to pay qualified campaign expenses, it was naturally to the advantage of Presidential campaigns to maximize the number of expenses that could meet the test of qualified campaign expenses. The extensions of time provided such an opportunity, but they prolonged the entire audit process. In 1980, the Commission decided to grant such extensions only under unusual circumstances.

Moreover, instead of delaying public release of post-primary audit reports until all matters relating to the campaign were finalized, the Commission released audit reports as soon as they were completed. When necessary, a statement accompanied the report indicating that

*continued on page 16*

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<sup>7</sup> For a summary of Commission testimony on the Andersen recommendations, see Appendix 7.



The Commission certified \$4,416,000 in public funds to the Democratic National Committee and the Republican National Committee for their respective national nominating conventions.

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Tommy Noonan/UNIPHOTO



Tommy Noonan/UNIPHOTO



Yoichi R. Okamoto

certain matters had been referred to the General Counsel's Office for consideration, which prevented any violation of the law's confidentiality requirement. This last procedure, adopted by the Commission in the closing days of the 1976 audits, permitted the Commission to release reports many months earlier than was possible when all legal questions were resolved prior to the audit's release.

### **Regulations**

In July 1980, the Commission prescribed two revisions to the regulations governing the suspension of primary matching fund payments when candidates exceed the State spending limits. The new provisions are summarized in Appendix 10.

## **Convention Financing**

The 1979 Amendments to the Federal Election Campaign Act (effective early January 1980) increased by \$1 million the public funding entitlement major parties may receive to finance their national nominating conventions. Under the new provision, each major party is entitled to \$3 million (plus a cost-of-living adjustment). By February 1980, the Democratic and Republican National Committees had each received a maximum entitlement of \$4,416,000 in public funds. In compliance with the public funding law, the Audit Division began audit fieldwork of both committees in December 1980. The Commission expected to publish the final audit reports early in April 1981. The audit reports will determine whether either committee must repay any public funds.

This year, in August, the Commission prescribed new regulations regarding the selection of delegates to national nominating conventions. These regulations represent the Commission's attempt to balance several concerns. On the one hand, the Commission wanted to avoid restricting the activities of individuals seeking to become delegates to national nominating conventions. On the other hand, the Commission wanted to make sure that Presidential primary

candidates did not make unreported and unlimited campaign expenditures in the guise of delegate expenses. Similarly, the Commission wanted to ensure that groups supporting slates of delegates observed disclosure requirements and contribution limits. Major provisions of the delegate regulations are highlighted in Appendix 10.

## **General Election Financing**

### **Major Party Candidates**

On July 24, 1980, the Commission approved payment of \$29,440,000<sup>8</sup> in public funds for the general election campaign of Republican Presidential nominee Ronald Reagan and his Vice Presidential running mate, George Bush.<sup>9</sup> The candidates had requested the funding in a letter written on July 18 to the Commission. Democratic Presidential nominee Jimmy Carter and his running mate, Walter Mondale, requested funding in a letter written August 15. On August 21, the Commission approved a \$29,440,000 payment for the Democratic general election campaign. In compliance with the revised general election financing regulations, the candidates agreed to abide by the overall spending limit, to use only public funds for the campaign and to comply with other legal requirements.

The Commission began to audit both the Republican and Democratic campaigns in January 1981 and anticipates public release of the audit reports in July 1981. The final report will determine whether the candidates complied with the financial requirements of the law and whether they must repay any public funds to the U.S. Treasury. Under the election law, publicly funded Presidential nominees must make repayments 1) if their qualified campaign expenses exceed the amount of public funds

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<sup>8</sup> \$20,000,000 plus a cost-of-living adjustment. See Appendix 9.

<sup>9</sup> See page 20 for a summary of a court suit that challenged the Commission's certification to the Republican nominees.

they receive; 2) if they accept private contributions to defray qualified campaign expenses; 3) if they use public funds other than for qualified campaign expenses or loan repayments; or 4) if the amount of public funding they receive exceeds their lawful entitlement. 26 U.S.C. Section 9007(b).

### New Party Candidate

*Anderson's Certification.* On November 13, 1980, nine days after the general election, the Commission certified a payment of \$4,164,906.24 to Presidential candidate John Anderson and his running mate, Patrick Lucey.<sup>10</sup> This certification, the first made to a new party candidate in the history of Presidential public financing, was based on procedures established by the Commission on November 3 (see below). Since Mr. Anderson's entitlement of \$4,206,976 was calculated according to an unofficial vote count, the Commission withheld one percent to safeguard against possible overpayment. The unofficial returns showed that Mr. Anderson had received 5,581,379 votes (or about 6.5 percent of total votes cast in the election). However, official tabulations of the vote later showed Mr. Anderson had received 5,719,437 votes. Accordingly, on January 8, 1981, the Commission certified an additional \$77,397, including the one percent originally withheld. Mr. Anderson's total funding amounted to \$4,242,304. As with the major party candidates, a final audit will be conducted to determine whether any funds must be repaid to the U.S. Treasury.

*New Certification Procedures.* In order to expedite John Anderson's public funding, the Commission established specific certification procedures for post-election funding of new party candidates. Under the new procedures:

- The candidate had to submit required agreements and certifications **before** the election.
- If the candidate received five percent or more of the total vote (based on unofficial election

returns), the Commission would certify, within 10 days, an initial payment proportional to the major party candidate's grant.<sup>11</sup>

- The candidate could challenge this initial determination in writing within 15 days.
- No later than 10 days after receiving official election results, the Commission would make a final determination of the candidate's payment and, if necessary, would adjust the initial payment.

### Regulations

Public funding of general elections proceeded according to revised regulations prescribed by the Commission in September 1980. These revised regulations contained refinements based on the Commission's experience in administering public financing in the 1976 general elections. They also reflected the 1979 Amendments to the Federal Election Campaign Act. The revised general election regulations were renumbered to conform with the sections of the U.S. Code on which they are based (26 U.S.C. Section 9001, *et seq.*). Appendix 10 contains a summary of the revisions.

## Disclosure

### Processing Information

In 1976, when the Commission's computer system was in a rudimentary stage, computerized information on Presidential campaign finance activity was limited. The Commission produced most information manually, which required substantial staff time and effort. For example, the list of all 1976 Presidential candidates (over 200) was compiled and updated by hand. Computer-generated printouts of financial information were available only for three Presidential candidates. The Commission's summary report on 1976 Presidential finance activity contained information that was, again, for the most part manually assembled.

<sup>10</sup> For a discussion of legal issues related to John Anderson's campaign, see page 20.

<sup>11</sup> See Appendix 9 for the formula used in calculating proportional payment.

By 1980, computer technology largely replaced the manual compilation of statistics. For the first time, staff entered into the computer system comprehensive and detailed information from Presidential reports. Information included all summary data on campaign receipts and disbursements, including the receipt and disbursement of public funds. Similarly, staff entered information pertaining to matching fund submissions, including total funds matched for each candidate. A computerized error-listing system, run on a monthly basis by reports analysts, served to improve the accuracy of data by identifying errors in reporting, data coding, data entry and programming. Statistics on Presidential elections remained current because the Commission placed high priority on the review and data entry of Presidential reports — analysts reviewed reports within 30 days of receipt.

The enlarged data base enabled the Commission to develop and disseminate more refined, more varied and more timely information than in 1976. In cooperation with other divisions, the Data Systems Development Division created programs that retrieved data on various aspects of Presidential campaign finance activity and, upon public request, the Public Records Office ran printouts of these programs.

### **Disseminating Information**

Since 1976, the Commission has witnessed a growing interest in campaign finance materials. Public demand has come from many sectors of the nation, including the press, political committees and operatives, and academia. These groups requested materials of all kinds: reports filed by individual committees, computer indexes and printouts, and the *FEC Reports on Financial Activity*, a series of reports consolidating and comparing the information filed by political committees. To service public demand for information, the Public Records Office extended visiting hours on reporting deadline weekends and remained open seven days a week from October 15 through election day.

*Raw Data and Computer Printouts.* By the end of 1980, the Public Records Office had made available almost 160,000 pages of Presidential campaign finance reports and statements filed by over 250 Presidential aspirants. In addition to campaign reports and primary matching fund submissions, the Office made public almost 100 Ethics Act reports, the personal financial statements required of all Presidential and Vice Presidential candidates under the 1978 Ethics in Government Act. The Office also answered, within 24 hours, numerous letters and phone orders for Presidential documents.

The Commission responded to the specific needs of those requesting information. For example, in response to the press and others interested in matching fund requests, the Commission made available microfilm reels of matching fund submissions — easier to handle than the paper copies that had been available in 1976. Regional interest prompted the Commission to issue printouts listing contributors to Presidential candidates by State. The Commission also developed a new Presidential index, the H Index,<sup>12</sup> which presented detailed information on contributions from political committees as reported by the Presidential campaigns. Because the major campaigns filed monthly disclosure reports, while some committees contributing to Presidential campaigns disclosed such support only at calendar quarters, the new H Index presented information on a timely basis.

*Reports on Financial Activity Series.* The *FEC Reports on Financial Activity of Presidential Pre-Nomination Campaigns*, a monthly series of statistical reports, covered campaigns whose total receipts and disbursements exceeded \$100,000. The series presented a breakdown of money raised and spent by Presidential primary campaigns. Additional tables provided details on primary matching fund activity, individual contributions over \$200, and contributions from

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<sup>12</sup> See Appendix 13 for a description of available indexes.

nonparty political committees. The most recent report released in the series, *Interim Report No. 7*, covered the campaign activity of 16 Presidential contenders from the start of their campaigns through May 31, 1980. Upon publication of each report, the Press Office issued a release explaining the report's significance and including a statistical chart that presented information of special interest to the press, such as the total amount of party and nonparty committee contributions each candidate received. The Commission plans to issue a final cumulative report in 1981.

## Legal Issues

### Contribution/Expenditure Limits in Presidential Elections

During 1980, the Commission defended the constitutionality of the public financing law in two suits. In *Republican National Committee v. FEC*, originally filed in June 1978, the Supreme Court upheld the constitutionality of the Presidential Election Campaign Fund Act. The Republican National Committee (RNC) had challenged the provision limiting major party candidates' qualified campaign expenditures to the amount of public funds they received. The RNC had also challenged the provision prohibiting publicly funded candidates from accepting private contributions. In April 1980, the Court unanimously affirmed the rulings of two lower courts that both provisions were constitutional.

The Commission, as the agency responsible for administering and enforcing the election law, defended the constitutionality of Section 9012(f) of the public funding law in *FEC v. Americans for Change, Americans for an Effective Presidency and Fund for a Conservative Majority*. Section 9012(f) prohibits unauthorized committees from making expenditures of over \$1,000 to further the election of Presidential nominees receiving public funds. The defendant committees allegedly planned to spend large sums on independent expendi-

tures<sup>13</sup> on behalf of a publicly funded Presidential nominee. The Commission filed suit after Common Cause had filed a similar suit against Americans for Change on July 1, 1980. Common Cause had asked the Court to construe Section 9012(f) and to uphold its constitutionality. The Commission successfully intervened in the Common Cause suit, seeking dismissal of the case on the grounds that the Commission had exclusive jurisdiction over civil enforcement of the alleged violations and that Common Cause lacked standing to bring suit. On August 28, the U.S. District Court for the District of Columbia dismissed the enforcement portion of Common Cause's suit but did not rule on the issue of Common Cause's standing. While agreeing with the Commission that Section 9012(f) would apply to the defendant committees' expenditures, the Court concluded that the section was unconstitutional. As of February 1981, the case was scheduled to be heard by the Supreme Court.

### Candidate Eligibility for Primary Matching Funds

In *Felice M. Gelman and Citizens for LaRouche, Inc. v. FEC*, the U.S. Court of Appeals for the District of Columbia affirmed the Commission's determination that Lyndon LaRouche had failed to reestablish his eligibility for primary matching funds in the Democratic Presidential primary held in Michigan on May 20, 1980. In its May 28 ruling, the Commission found that Mr. LaRouche had failed to receive 20 percent of all votes cast for Democratic contenders in the primary, the minimal amount necessary to reestablish eligibility.

In their suit, filed on June 1, plaintiffs contended that the Commission should have applied the definition of "candidate" provided in Section

<sup>13</sup> An independent expenditure is "an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate." 11 CFR 109.1(a).

9033(2) of the public funding law in determining whether Mr. LaRouche had reestablished his eligibility. The provision stipulates that, for purposes of establishing **initial** eligibility for primary matching funds, a Presidential primary candidate must be "actively conducting campaigns in more than one State." In calculating total votes in the Michigan primary, Mr. LaRouche argued, this definition of "candidate" would have excluded votes cast for a candidate who had ceased to campaign actively in more than one State and votes cast for "uncommitted" delegates (those not pledged to any specific candidate). The Commission argued that the provisions of Section 9033(c)(4)(B) required the Commission to count total votes cast for **all** Presidential primary candidates in a particular primary — including all votes cast for inactive or write-in candidates or "uncommitted" delegates.

In upholding the Commission's method of determining Mr. LaRouche's reeligibility for primary matching funds, the Court stated "...petitioners' narrow focus on the word 'candidate,' to the exclusion of the phrase within which that word appears, results in a strained and artificial construction that is at odds with the Act's underlying concern that Federal matching funds should go only to those candidates who have demonstrated at least minimal public support for their candidacies."

### Major Party Certifications

The Commission's certification of public funds to the Republican nominee was challenged in *Carter-Mondale Reelection Committee, Inc. and the Democratic National Committee v. FEC*, filed July 24, 1980. The Carter-Mondale Committee (the Committee) asked the U.S. Court of Appeals for the District of Columbia Circuit to prevent the Commission's certification of the Republican nominees, pending resolution of an administrative complaint filed by the plaintiffs against the nominees. In their complaint to the Commission, the Committee had said that Ronald Reagan would be ineligible for public funds since he had allegedly violated the law on several counts. The Committee had charged that

several groups, purportedly making independent expenditures on Mr. Reagan's behalf, were in fact making qualified campaign expenditures with the prior consent of the candidate and his agents. In the suit, the Commission argued that the certification was proper and within the Commission's exclusive jurisdiction. On September 12, the Court ruled in the Commission's favor and affirmed the Commission's "action in certifying the nominees' application for funds."

### New Party Candidates

During 1980, the Commission issued four advisory opinions<sup>14</sup> and engaged in two court suits, all arising from issues relating to new party candidates.

*Eligibility for Public Funds.* In AO 1980-56, the Commission decided that the total number of votes cast for Mr. Barry Commoner in the Presidential election would determine his eligibility for retroactive public funding — regardless of whether his name appeared on State ballots as an independent candidate or as the Citizens Party's candidate.

In *John B. Anderson and the National Unity Campaign for John Anderson v. FEC*, filed July 31, 1980, the plaintiffs asked the U.S. District Court for the District of Columbia to rule that:

- Mr. Anderson would be entitled to post-election public funding if he were to receive five percent or more of the vote as an independent candidate; and
- If he were denied public funds, then the public financing law would be unconstitutional.

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<sup>14</sup> The Commission issues advisory opinions to persons who raise questions on the application of the law or Commission regulations to a specific factual transaction that the requesting person proposes to undertake or continue. Any person who requests an advisory opinion and acts in accordance with the opinion is not subject to any sanctions under the law. An advisory opinion may also be relied upon by any person involved in a specific transaction "... indistinguishable in all its material aspects ... from the activity or transaction discussed in the advisory opinion." 2 U.S.C. Section 437f(c). See also pages 27, 31 and Appendix 11.

The Commission argued that, before filing suit, Mr. Anderson should have requested an advisory opinion on his eligibility for public funding. Upon urging by the Court, the National Unity Campaign requested the Commission's advice, which resulted in AO 1980-96 (see below). On September 8, the Court dismissed the suit.

The Commission determined in AO 1980-96 that John Anderson could be eligible for post-election funding. Under the general election public financing law, an individual must be a "candidate" of a "political party" in order to receive public funds. Mr. Anderson qualified as a "candidate" because he was to appear on the ballot in 10 or more States. A number of organizations supporting Mr. Anderson's candidacy qualified as "political parties" because they satisfied the criteria established in Commission regulations. Specifically, the Anderson organizations had "nominated or selected an individual for election" by obtaining ballot access for Mr. Anderson in their respective States. In addition, the name of the nominated individual (Mr. Anderson) was to appear "on the general election ballot as the candidate of such . . . organization." Therefore, once the Commission received official verification that Mr. Anderson's name would appear on the State ballots as their candidate, the organizations would acquire "political party" status.

Commissioner John Warren McGarry filed a dissenting opinion to AO 1980-96. In the dissent, he maintained that the opinion did not address the real issue presented in the request, namely, whether John Anderson was eligible, as an independent candidate, for post-election public funding. Commissioner McGarry concluded that John Anderson should be entitled to post-election funding as an independent, without being compelled to establish a party apparatus in order to qualify for public funding.

Commissioner Frank P. Reiche filed a concurring opinion similar to Commissioner McGarry's dissent. Mr. Reiche stated that the opinion refused to acknowledge that Mr.

Anderson's campaign was "dedicated to the election of an independent candidate" and was "devoid of any interest in the formation of a political party." He considered that independent candidates should be treated as eligible for public funding on an equal basis with minor or new party candidates and should not have to "cloak themselves with the appearance of political party formality . . . ."

Commissioner Robert O. Tiernan also filed a separate opinion in which he unequivocally concurred in AO 1980-96. He stressed that the issue presented in AO 1980-96 was not whether the public funding provisions could be expanded to include independent candidates "in order to avoid constitutional snags . . . ." Instead, the Commissioner contended that the issue concerned only whether Mr. Anderson would be eligible for post-election funding as a new party candidate.

*Bank Loans.* AO 1980-108 addressed the permissibility of bank loans to be made to Mr. Anderson's principal campaign committee, the National Unity Campaign. The Commission decided that, although the loans were to be secured on the expectation that Mr. Anderson would receive public funds, they would not be treated as prohibited contributions but, rather, as bona fide loans. The Commission reasoned that the loans would not necessarily fall outside the "ordinary course of business" solely because the principal means of repayment would be the post-election funds available to Mr. Anderson if he received five percent of the popular vote. Furthermore, the loans would not violate the law's requirement that bank loans be "made on a basis which assures repayment" solely because Mr. Anderson's receipt of post-election funds was contingent on his receiving at least five percent of the vote. The Commission noted that the risk of the candidate's failure to repay the loans was mitigated by a proposed revolving credit agreement that included several risk-control mechanisms.



Commissioner Tiernan filed a dissenting opinion to AO 1980-108, in which he questioned the legal standing of the advisory opinion request. Citing Section 112.1(b) of Commission regulations, Mr. Tiernan stated that the National Unity Campaign's request was "merely an abstract question of general interpretation about the possible actions of a third party bank" and was, therefore, "procedurally deficient as an advisory opinion request . . . ."

In their concurring opinion, Commissioner Thomas E. Harris and Commissioner McGarry stated that they did not believe AO 1980-108 ruled on the merits of the proposed loan agreement. Both Commissioners would have preferred that the opinion exclude any mention of the loan agreement's particulars since the details were irrelevant to the opinion's conclusion.

*Committees Supporting New Party Candidates.* Mr. Anderson again brought suit against the Commission in *John B. Anderson v. FEC*, filed September 8, 1980. In this second suit, Mr. Anderson challenged the constitutionality of two provisions of the election law:

- The provision that entitles a national party committee to receive contributions of up to \$20,000 per year from individuals (Section 441a(1)(b)); and
- The provision that permits a national party committee to make special "coordinated party expenditures" on behalf of its Presidential nominee (Section 441a(d)).

Mr. Anderson sought a preliminary injunction directing the Commission to permit the application of both provisions to the "National Unity Campaign 441a(d) Committee," which had registered as a committee only the day before filing suit. The Commission successfully opposed the motion and defended the constitutionality of the challenged provisions. The U.S. Court of Appeals for the First Circuit granted the Commission's motion to remand the case to the district court for fact finding. The case is still pending.

However, the National Unity Campaign for John Anderson and the National Unity Campaign 441a(d) Committee subsequently requested an advisory opinion on their status as national committees of a political party. In AO 1980-131, the Commission held that, because neither committee qualified as a national committee, they were not entitled to receive up to \$20,000 in contributions from individuals or to make coordinated party expenditures (441a(d) expenditures). Neither committee had nominated candidates for other Federal offices; conducted voter registration and get-out-the-vote drives; provided speakers; organized volunteer workers; publicized issues of importance to the party; or held a national convention. The Commission believed that the committees operated as single-candidate committees exclusively on behalf of John Anderson and his running mate, Patrick Lucey.

## Chapter 3

# Administration of the Election Law

23

The Commission's Public Records Office provides micro-filmed campaign finance reports for public inspection and copying.



Blake Lange

The 1979 Amendments to the Federal Election Campaign Act, effective January 8, 1980, had a major impact on Commission operations. The Commission altered existing programs and developed new ones to implement the Amendments. The Commission made these administrative changes quickly in order to have the new programs functioning in time for the 1980 elections. In addition, the Commission made other program changes to more fully disclose and monitor election activities.

This chapter summarizes 1980 Commission developments that do not specifically relate to the public financing of Presidential elections. The first part of the chapter describes the impact of the 1979 Amendments on Commission activity. Program improvements initiated by the Commission during the past year are also discussed.<sup>1</sup> The chapter ends by examining relevant legal issues arising from 1980 litigation and advisory opinions.

Statistical information on the operations of Commission divisions and offices is provided in Appendices 5 and 6.

### Encouraging Voluntary Compliance

During 1980, the Commission continued to encourage voluntary compliance with the election law.<sup>2</sup> The 1979 Amendments affected this mission in two ways. First, the Commission sought to promote compliance with the newly amended law by promptly responding to questions from candidates and committees and by alerting organizations to changes that specifically concerned them. Secondly, the 1979

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<sup>1</sup> For detailed descriptions of the Commission's ongoing operations, see the 1977 and 1978 *Annual Reports*, available for review in the Public Records Office and for purchase through the Government Printing Office.

<sup>2</sup> Commission testimony before the House Administration Committee's Task Force described ongoing Commission efforts to promote voluntary compliance. See Appendix 7.

Amendments imposed modifications on the Commission's methods and procedures for promoting compliance.

### Assistance to Committees

From its beginning, the Commission has promoted compliance with the election law by helping political committees understand the requirements of the law. In the wake of the 1979 Amendments, the Commission stepped up its efforts in this regard. President Carter signed into law the 1979 Amendments to the Federal Election Campaign Act in January 1980, ten months before the 1980 general election and only a few weeks before the first primaries. Both the Public Communications Office and the Reports Analysis Division were at once confronted with questions from candidates and committees on the changes in the law and their effect on campaign activities. In order to meet the public's immediate need for information, both offices held a brief but intensive retraining program for staff who answer telephone calls and letters from the public. Within a month, the Commission released its own edition of the newly amended Federal Election Campaign Act (the Act). In addition, the Publications Office produced a supplemental issue of the Commission's monthly newsletter, the *Record*, which summarized the 1979 Amendments and highlighted changes that affected specific groups, such as party or candidate committees. (See the FEC's 1979 *Annual Report*, page 27.) A second supplement to the *Record*, directed exclusively to State and local party organizations, explained in greater detail how the 1979 Amendments impacted on their operations. The Commission also published its own version of newly revised regulations (see below).

Finally, the Commission notified certain types of committees that the Amendments stipulated changes in their procedures. Letters to unauthorized candidate committees alerted them to the new requirement that prohibits such committees from including in their titles the names of candidates they support or oppose. Similarly, separate segregated funds were notified of the



Blake Lange

From its beginning, the Commission has promoted compliance with the election law by helping political committees understand the requirements of the law.

new provision that requires a separate segregated fund's title to include the name of its sponsoring organization. Another notification explained that reports on office accounts were no longer required.

### Filing Notifications

Reminder notices of upcoming reports and overdue reports have been a key part of the Commission's effort to encourage compliance with the Act's reporting requirements. The 1979 Amendments codified procedures for notifying committees of filing dates for special election reports and for taking action against committees that fail to file reports on time. These changes to the law did not substantially affect Commission operations as the Commission had been fulfilling the newly mandated requirements for some time. The Commission had been sending committees "prior notices" alerting them to upcoming filing deadlines, including those for special election reports. In compliance with the amended law, the Commission began to publish special election filing dates in the *Federal Register*. While continuing the practice of sending mailgrams that notify nonfiling committees of their

failure to file reports, the Commission began to give delinquent committees additional time to respond to the mailgram before the Commission initiated enforcement procedures. As required under the amended law, the Commission published only the names of nonfiling candidate committees. Formerly, the names of all nonfilers were published.

The Reports Analysis Division began to use a new computerized word processing system to issue standard letters that asked committees to provide additional information or to address a particular problem. The new system expedited notifications and proved cost efficient.

#### Regulations

To help committees understand the requirements of the new Amendments, the Commission sent to Congress a set of revised regulations seven weeks after the President signed the

amended law; this met the deadline set in the Amendments. The amended statute also allowed the Commission to prescribe these regulations after a Congressional review period of only 15 legislative days, rather than the normal 30 days. On April 1, the Commission formally prescribed the new regulations, which modified only those parts of the previous regulations that were affected by the 1979 Amendments. The regulations on reporting requirements (Part 104), for example, were changed substantially, while the regulations on separate segregated funds (Part 114) were altered only slightly. The following chart shows which parts and sections of the previous regulations were affected and what types of changes were made. In some cases, provisions were rewritten; sometimes they were merely renumbered; occasionally they were deleted altogether. The citations refer to the Commission's first set of regulations, prescribed on April 13, 1977.

Part	No Change	Rewritten	Renumbered	Deleted
100		•	•	
101		•	•	
102		•	•	
103		•		
104		•	•	
105		•	§ 105.4	
106	•(except minor revisions)	§ 106.1 (c) (3) § 106.2(a) § 106.3(d)		

*continued*

Part	No Change	Rewritten	Renumbered	Deleted
107*		•		
108	§ 108.7 § 108.8	§ § 108.1 - 108.6		
109	§ 109.1	§ 109.2 § 109.4	§ 109.4	§ 109.3 § 109.5
110	§ 110.1 § § 110.3- 110.5 § § 110.8 - 110.10	§ 110.2(b) § 110.6(c)(4) § 110.6(c)(4)(i) § 110.11(a) § 110.12(a) § 110.12(b)(5) & (6)	§ 110.7(c)(3)	§ 110.7(b)(5) § 110.7(c)(2) § 110.11(c)
111		•	•	
112		•	•	
113	§ 113.1	§ 113.2(c) & (d) § 113.3(b) § 113.5(b)	§ 113.5	§ 113.4
114	•(except minor revisions)	§ 114.1(a)(2)(v) § 114.6(c)(3) § 114.6(d) § 114.6(d)(2)(ii) § 114.6(d)(3)(i) & (ii)		
9008	•(except minor revisions)	§ 9008.3(a)		

\* Previous change. Amended Section 107 was prescribed by the Commission on December 20, 1979, and published in the *Federal Register* on November 1, 1979 (44 *Fed. Reg.* 63045).

### Advisory Opinions<sup>3</sup>

Advisory opinions — through which the Commission offers guidance on how the law applies to specific situations — have been an effective way of promoting compliance with the Act. The 1979 Amendments modified advisory opinion procedures by expanding the list of those who could request opinions and by ensuring that requesters received an opinion within a definite time. Prior to the Amendments, advisory opinions could be issued only to Federal officeholders, candidates and political committees; under the amended statute, any person could request an opinion. Consequently, there was a marked increase in the number of advisory opinions issued in 1980 — 134, compared with 65 opinions issued in 1979 and 108 advisory opinions in 1978. The increased number of opinions in 1980 also reflected the fact that individuals wanted guidance on the practical application of the Amendments to specific activities. For example, committees asked for clarification of new statutory restrictions on the titles of political committees. Many requesters wanted advice on the use of excess campaign funds because the Amendments prohibited the personal use of excess funds by persons who had not been officeholders when the new Amendments became law (January 8, 1980).

The Commission released opinions more quickly than in the past, reflecting the new statutory deadline of 60 days. Further, the amended law established an expedited 20-day deadline for requests submitted by candidate committees within 60 days before an election in which the

candidate was involved. Under the new procedures, the Commission issued advisory opinions (not including expedited opinions) on an average of 46 days after receiving a request.<sup>4</sup>

### Disclosure

During 1980, the Commission implemented legislative changes in the disclosure of campaign finance information and modified its procedures for disseminating this information to the public. On the one hand, the Commission published new reporting forms and adopted new procedures for computerized reporting of campaign finance information. On the other hand, the agency developed new computer programs, generated more press releases and systematized regulations governing public access to documents.

#### New Forms and Reporting Requirements

The 1979 Amendments modified the requirements that apply to the disclosure of financial activity by political committees. For example, the reporting categories, under which committees disclose particulars of receipts and disbursements, were redefined and reordered. The Amendments also reduced the number of reports committees had to file and changed the schedule of deadlines for filing reports.

The Commission redesigned the reporting forms to implement the Amendments and to make them easier for committees to use. The final forms included, for the first time, line-by-line instructions. They were published in March and April 1980.

Changes in reporting requirements necessitated revisions in computer programs as well. Because the Data Systems Development Division corrected the programs quickly, the Commission continued to release periodic campaign finance statistics with no interruption. Nevertheless, the

<sup>3</sup> The Commission issues advisory opinions to persons who raise questions on the application of the law or Commission regulations to a specific transaction that the requesting person proposes to undertake or continue. Any person who requests an advisory opinion and acts in accordance with the opinion is not subject to any sanctions under the law. An advisory opinion may also be relied upon by any person involved in a specific transaction "...indistinguishable in all its material aspects...from the activity or transaction discussed in the advisory opinion." 2 U.S.C. Section 437f(c). See pages 20 and 31 for brief summaries of advisory opinions that addressed significant issues in 1980. All advisory opinions issued in 1980 are summarized in Appendix 11.

<sup>4</sup> For statistics on the Office of General Counsel's activities, see Appendix 5, page 57.

changes in reporting categories made it difficult, in some cases, to compare 1980 statistics with those of 1978 and 1976.

The Commission also adopted new procedures for approving computerized formats used by committees to itemize their receipts and disbursements. Commission regulations permitted committees to substitute computer printouts for standard forms but required committees to first submit a sample format for Commission approval. To qualify for Commission approval, the computerized format had to include all information required on the Commission's own forms; it had to present information in the same order as the forms; and it had to lend itself to being legibly reproduced and microfilmed. To expedite approval of requests to use a computerized format, the Commission delegated approval authority to the Reports Analysis Division.

Changes in reporting requirements, stemming from the 1979 Amendments, necessitated revisions in computer programs. Because the Commission corrected the programs quickly, it continued to release periodic campaign finance statistics with no interruption.



Blake Lange

### Press Activity

The Press Office continually updated press releases on campaign finance information during the election year. Using the latest computer data, the Office issued a series of statistical charts on contributions by nonparty committees and on money raised and spent by Senate and House campaigns.

These press releases heightened national interest in campaign finance activity. While continuing to respond to inquiries from reporters around the nation, the Press Office briefed a growing number of foreign press representatives. The Office also coordinated activity with major networks and local television stations that filmed Commission activity for news stories and special programs.

### New Computer Indexes

In response to the growing interest in independent expenditure<sup>5</sup> activity, the Commission created three new indexing programs<sup>6</sup> in July 1980. Issued regularly, they provided detailed information on independent expenditures covering the period 1977-1978 and 1979-1980. One index listed independent expenditures by the committees or persons who made them, indicating the candidates they supported or opposed and the total amounts they spent, per candidate. A second index gave the particulars of each independent expenditure as well as the summary information provided by the first index. The third index, a revision of one used in 1979, listed independent expenditures by candidate, providing the details of each expenditure made for or against a candidate.

### Growth of Nonparty Political Committees

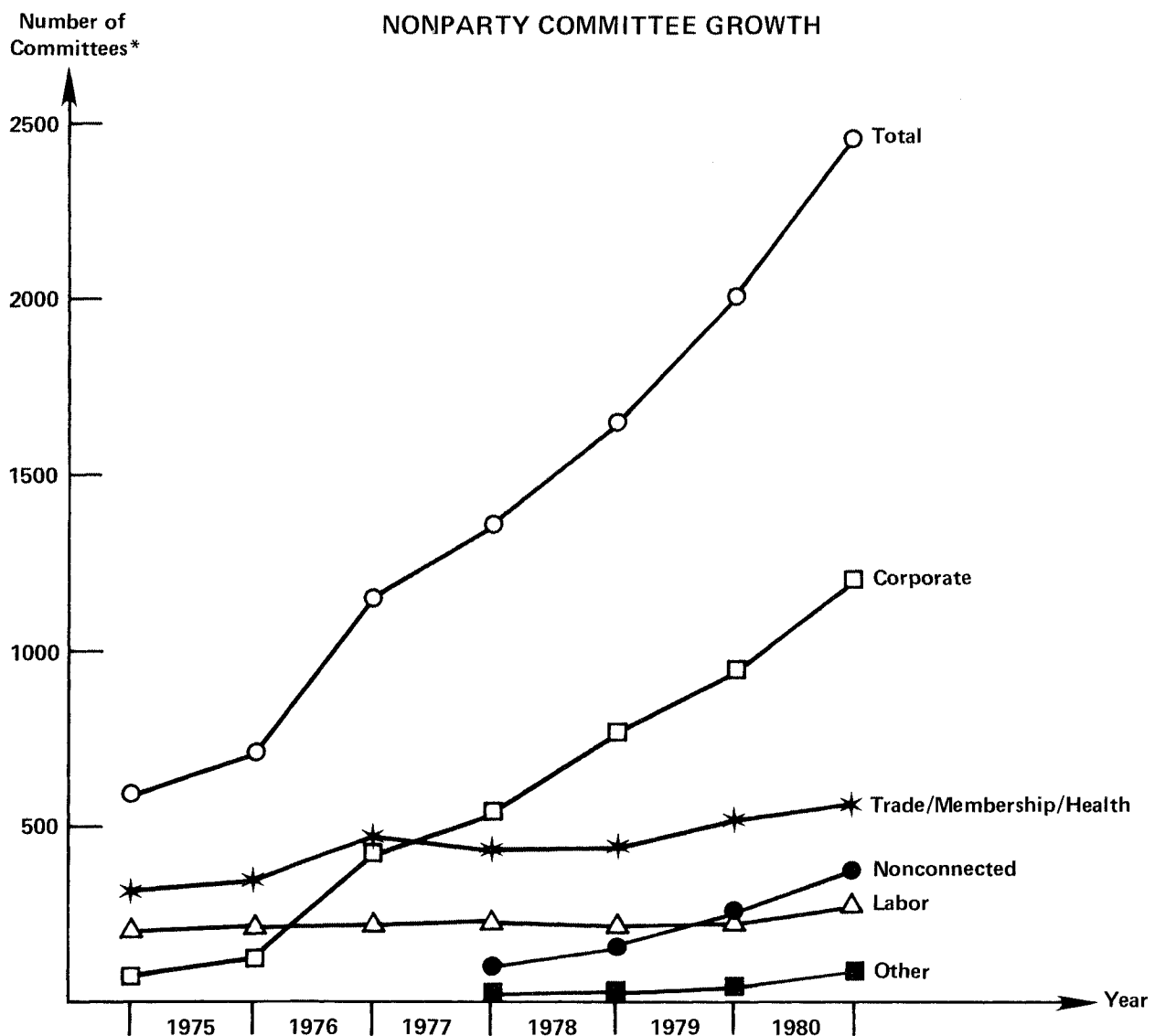
An example of how the Commission's computer

<sup>5</sup> See footnote 13, page 19, for the definition of independent expenditure.

<sup>6</sup> See also Appendix 13.

base was used to extract information of relevance to the public is presented in the nonparty (noncandidate) political committee growth chart. Based on data entered into the computer as of December 31, 1980, the chart shows an increase of more than 500 nonparty committees during 1980. The chart plots the growth of

nonparty committees between 1975 and 1980. Figures show that 608 committees were in existence at the beginning of 1975. By the end of 1976, that number rose to 1,146 and, by January 1981, it reached 2,551. The graph does **not** reflect the financial activity of these committees.



\*This graph includes all political committees that are not authorized by a Federal candidate and are not established by a political party.





Les Moore/UNIPHOTO

The 1979 Amendments gave State and local party committees more opportunities for participation in the Federal election process.

### **Purchase of Commission Documents and FOIA Requests**

In June 1980, the Commission's revised regulations on the Freedom of Information Act (FOIA) became effective, as did new regulations governing public access to Commission documents. The regulations set out uniform procedures and fees for providing documents to the public both under FOIA and pursuant to the Commission's public disclosure duties.<sup>7</sup> The Press Office, which responds to FOIA requests, received 83 requests in 1980. A number of these requests were for computer tapes containing such data as Commission mailing lists, indexes of committees registered with the Commission and information on contributions to candidates.

## **Audits**

The 1979 Amendments stipulated new procedures for determining which committees the Commission would audit. Under the amended provisions, the Commission adopted audit selection criteria that established a threshold for substantial compliance with the law. Reports analysts rated a committee's reports on the basis of certain criteria. If the rating exceeded the compliance threshold, then, by an affirmative vote of four, the Commission could direct staff to audit that committee. The Commission had to begin such an audit within 30 days of the vote. However, in the case of a candidate's authorized committee, the Commission had to initiate the audit within six months after the election for which the candidate campaigned.

## **Enforcement**

The 1979 Amendments substantially changed procedures for processing complaints (called Matters Under Review or MURs) filed with the Commission. Early in February 1980, the Commission adopted interim enforcement procedures, later included in the revised regulations implementing the amended statute. The new procedures eliminated the "reasonable cause to believe" stage in the enforcement process and required the Commission to give additional notifications to respondents. As a result, legal staff had to review 150 matters that were pending when the Amendments became law.

The 1980 general elections necessitated special compliance procedures to quickly resolve possible election law violations affecting candidates and campaigns involved in the election. In September 1980, the Commission approved procedures for expediting complaints filed with the Commission within 30 days before the November election. These procedures applied only to Federal candidates running in the general election and to political committees making contributions and expenditures in connection with the election. Expedited procedures cut by almost one month the time required to process complaints.

<sup>7</sup> See the chart on Commission regulations, Appendix 5, page 58.

Because of special statutory requirements for expediting judicial review (2 U.S.C. Section 437h), virtually all Commission litigation was conducted under extremely expedited schedules. Court suits proceeded rapidly from discovery to briefing to argument. Despite the pressures of time, the Commission established a record of success in its 1980 court actions.<sup>8</sup>

## Legal Issues

A number of legal issues, which emerged in 1980 from Commission litigation and advisory opinions (AOs), served to more clearly define the election law. They are discussed below.

### Independent Expenditures<sup>9</sup>

Three advisory opinions distinguished expenditures that were truly independent from those that, because of invalidating circumstances, resulted in contributions to the candidates involved. In AO 1979-80 (issued March 12, 1980), the Commission ruled that the National Conservative Political Action Committee's (NCPAC) proposed independent expenditure advocating the **defeat** of a candidate might be considered an in-kind contribution benefiting the candidate's **opponent**. In making the independent expenditure, NCPAC wished to use the services of a consultant who had previously been engaged by the opponent. The Commission noted that, in order for the expenditure to be independent, it could not be made "with the cooperation or prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate." 11 CFR 109.1(b)(4)(i).

Based on this definition, the Commission presumed that NCPAC's expenditures advocat-

ing the defeat of a candidate would **not** be independent if:

- The consultant engaged by NCPAC had been an agent of the opponent; or
- The expenditure was based on information provided by the opponent or his agent; or
- The expenditure was made through any person connected with the opponent's campaign, as specified by 11 CFR 109.1(b)(4)(i)(B).

Similarly, in AO 1980-116, the Commission determined that the Americans for a Responsible Presidency, an independent expenditure committee, could not make an independent expenditure on behalf of a certain candidate if they used the speech-making services of an individual previously paid by the committee of the same candidate. These circumstances implied coordination between the speaker and the candidate's campaign.

In AO 1980-46, NCPAC again consulted the Commission about an independent expenditure. The Committee asked whether or not its expenses for a proposed mass mailing to advocate a candidate's election and to solicit contributions for him would be considered an independent expenditure. The Commission determined that the expenditure would be an in-kind contribution to the candidate because NCPAC planned to receive the contributions before passing them on to the candidate's committee. The Commission reasoned that, in accepting contributions collected and forwarded by NCPAC, the candidate's committee would be accepting NCPAC's solicitation services.

Commissioner Joan D. Aikens filed a dissenting opinion to AO 1980-46, in which she noted that the opinion disputed the independence of the expenditure only because of the candidate's acceptance of the contributions solicited and transmitted by NCPAC — not because the contributions were from NCPAC or controlled by NCPAC or solicited with the prior consent of the candidate.

<sup>8</sup> For statistics on the Office of General Counsel's activities, see Appendix 5, page 57.

<sup>9</sup> See footnote 13, page 19, for the definition of independent expenditure.

Commissioner Max L. Friedersdorf also dissented to AO 1980-46. Like Commissioner Aikens, Mr. Friedersdorf noted that NCPAC's payments for the mass mailing were assumed to be independent expenditures at the time of the mailing and became in-kind contributions only when the candidate accepted the contributions.

Additionally, the courts examined the issue of limitations on contributions from individuals and groups to political committees making independent expenditures. In *Stewart R. Mott, Rhonda K. Stahlman and the National Conservative Political Action Committee (NCPAC) v. FEC*, filed December 17, 1979, plaintiffs challenged the constitutionality of provisions of the election law, Commission regulations and advisory opinions. Plaintiffs based their argument on the Supreme Court's *Buckley v. Valeo* decision, which held that limitations on independent expenditures were unconstitutional. Plaintiffs therefore contended that limitations on contributions to independent expenditure committees would likewise be unconstitutional. The Commission argued that some of the claims presented in the suit were not ripe for consideration by the Court while others failed to state a claim upon which relief could be granted. The District Court for the District of Columbia agreed with the Commission and, on June 30, 1980, dismissed the suit. The Court pointed out that, in its *Buckley v. Valeo* decision (424 U.S. 1 at 38 (1976)), the Supreme Court had upheld the constitutionality of the contribution limits.

#### **Committee Communications**

The issue of what constitutes "express advocacy" (of the election or defeat of a candidate) was the subject of court cases and advisory opinions. The suit *FEC v. Central Long Island Tax Reform Immediately (CLITRIM)* arose from a verified administrative complaint filed with the Commission. The complainants had alleged that, because CLITRIM's publication and distribution costs for a pamphlet constituted an independent expenditure, CLITRIM had committed two violations of the election law: failure

to report the costs of the independent expenditure and failure to publish a notice stating who had paid for the pamphlet. The Commission proceeded through the administrative enforcement process set out in Section 437g of the election law. Because the Commission and CLITRIM were unable to settle the matter through a conciliation agreement, on August 1, 1978, the Commission filed a civil complaint in the District Court to enforce the law, as authorized in Section 437g(a)(6).

In its defense, CLITRIM questioned the constitutionality of: the Commission's attempt to enforce the law; the provisions that CLITRIM had allegedly violated; and certain of the Commission's regulations. Furthermore, CLITRIM claimed that its pamphlet was not subject to the independent expenditure provisions since it did not expressly advocate the election or defeat of candidates. In its argument to support this claim, CLITRIM pointed out that the pamphlet had not contained any of the terms of express advocacy specified by the Supreme Court in *Buckley v. Valeo* (424 U.S. (1976) at 44 N.52).

Responding to this argument, the Commission maintained that the CLITRIM pamphlet was not merely informational; rather, it was intended to influence elections since it had discussed CLITRIM's position on certain issues, evaluated candidates' positions on the same issues and urged readers to vote with CLITRIM. Additionally, the Commission argued that the challenged provisions were constitutional. In a limited ruling, which did not address the constitutional issues, the U.S. Court of Appeals (Second Circuit) concluded that the CLITRIM pamphlet did not contain express advocacy and, therefore, that CLITRIM had not violated the law.

In AO 1980-9, the Commission determined that a letter, printed and distributed by Arizonans for Life, a registered political committee, was not an independent expenditure because it did not expressly advocate the defeat of a candidate. Although the letter made statements relating

to Senator Edward Kennedy's Presidential candidacy, it did not contain the explicit wording required for express advocacy. The Commission noted that expenses for the letter would, however, be reportable by the committee as general disbursements.

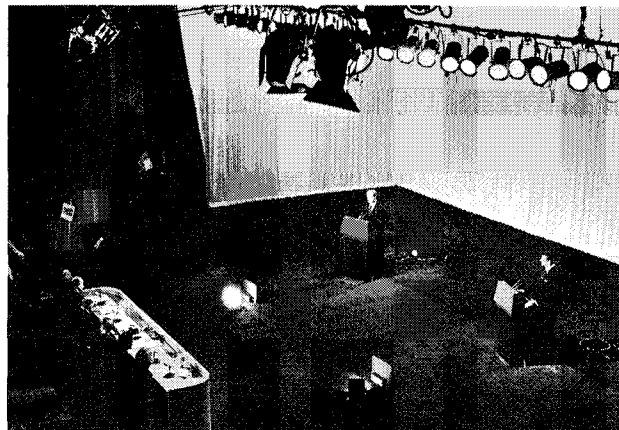
In AO 1980-106, the Commission said that payments made by FaithAmerica, an unincorporated association, to publish and distribute a brochure summarizing Presidential candidates' views would constitute "expenditures" made for the purpose of influencing a Federal election. The payments would be considered "expenditures" because the information, and the manner in which it was to be presented, were designed to influence the reader's choice in the 1980 Presidential election rather than to promote discussion of public issues.

#### Corporate Communications

Several advisory opinions concerned the use of corporate funds for public communications. Clarifying the scope of permissible nonpartisan communications, the opinions permitted ads urging voter registration, but disallowed the dissemination of candidates' views on campaign issues.

In AO 1980-20, the Commission approved the use of corporate funds to pay for a newspaper advertisement that read "Please Register to Vote." The opinion, requested by Rexnord, Inc., overruled a previous opinion (AO 1979-48) also issued to Rexnord. The Commission delineated the reasons why the corporate-sponsored advertisement complied with the regulations:

- Rexnord's activity did not involve providing personal services, such as driving people to the polls, which would have required joint sponsorship with a nonprofit, nonpartisan organization under Commission regulations.
- The advertisement was strictly nonpartisan and did not suggest that readers register with a particular party.
- The advertisement did not appeal to any identifiable group, since Rexnord had placed it in a general circulation newspaper.



United Press International

In 1980, the Commission prescribed new regulations governing the funding of candidate debates.

Commissioners Thomas E. Harris and Robert O. Tiernan filed a dissent to this advisory opinion. They argued that, under current regulations, if a corporation wished to urge the general public to register to vote, it could do so only by distributing or reprinting information prepared by election officials. They suggested, therefore, that the Commission draft a regulation permitting strictly nonpartisan corporate communications to the public rather than issue an advisory opinion.

In a concurring opinion, Commissioner Frank P. Reiche drew a distinction between "pure speech," that is, nonpartisan speech, and "speech plus," which he defined as assertive political speech. The Commissioner categorized as "pure speech" the Act's expenditure exemption for "nonpartisan activity designed to encourage individuals to vote or to register to vote." 2 U.S.C. Section 431(9)(B)(ii). Stating his belief that Congress did not intend to prohibit corporations from engaging in "pure speech," Mr. Reiche concluded that this exemption for nonpartisan

voter registration and get-out-the-vote drives applied to corporate communications such as Rexnord's. Mr. Reiche was also in favor of revised regulations that would clarify the "pure speech" activities permitted to corporations.

The Commission, in AO 1980-33, permitted a nonprofit, incorporated membership organization to finance public announcements encouraging voting and voter registration. The Commission determined that the radio announcements, in which the National Association of Realtors urged voter registration, satisfied the same nonpartisan criteria applied to Rexnord's newspaper advertisement. One radio announcement, considered in the Supplement to AO 1980-33, differed from the other communications in its suggestion that the public obtain registration information at real estate offices of Association members. The Commission approved the announcement with a proviso that the information be prepared by election officials and be distributed in a nonpartisan manner.

Commissioners Tiernan and Harris dissented to AO 1980-33 and its Supplement for the same reasons they had dissented to the Rexnord opinion, namely, they believed the issue should be resolved through the regulatory process, rather than by an advisory opinion.

In AO 1980-90, the Commission responded to a request by the Atlantic Richfield Company, which proposed producing for public distribution a videotape of interviews with major Presidential candidates. The Company intended that the interviews would be carried on commercial and cable television. The Commission determined that the communication would result in prohibited contributions to each of the candidates because the tape was prepared by the Company and not obtained from a civic or other nonprofit organization, as the regulations required.

Commissioners Aikens and Friedersdorf dissented to this opinion as an "overly restrictive interpretation" of the Act's prohibitions on

corporate activity. The Commissioners did not believe that Section 441b, the provision prohibiting corporate contributions and expenditures, extended to nonpartisan public service communications sponsored by corporations. Rather, they contended that Section 441b was designed only to prevent corporations from engaging in "active electioneering," that is, partisan activity urging the public to vote for a particular candidate or party.

#### **Professionals' Volunteer Services**

Two advisory opinions dealt with the issue of whether the Act's exemption for volunteer activity applied to professional services donated solely for fundraising. Because of differing interpretations, the Commissioners failed to approve a third advisory opinion request on the same issue.

In AO 1980-34, the Connally for President Committee made the following inquiry about artists' volunteer services: when artists created and donated a piece of artwork, did the donation constitute a contribution in-kind if the committee used the artwork as a fundraising device? The Commission determined that if the artists were reimbursed for their materials (e.g., canvas, paints), no contribution would result. However, the full purchase price of each artwork sold would be considered a contribution to the Committee. The Commission noted further that the Committee's proposed sale of artwork by a dealer would be a fundraising, not a commercial, activity since the money collected would be used to retire the Committee's debts.

The Commission addressed the same issue in AO 1980-42, requested by the Hart for Senate Committee. Here, the Commission similarly determined that entertainers' volunteer services for a fundraising concert would not be considered contributions; nevertheless, the proceeds from ticket sales would be contributions from the ticket purchasers. Moreover, the Commission approved the Committee's plan to contract a professional promoter to stage the concert but advised the Committee to establish controls

ensuring that purchasers did not violate the election law's dollar limits or prohibitions on contributions. The Commission also delineated the required banking and transmittal arrangements for the proceeds.

Commissioner Reiche wrote dissenting opinions to both AO 1980-34 and AO 1980-42. In his dissents, the Commissioner stated that the value of professionals' volunteer services should be construed as a contribution, subject to the same \$1,000 limit that applies to "every citizen." Commissioner Reiche remarked that the volunteer services exemption was originally designed to encourage grassroots participation in political campaigns and was not intended to permit the donation of unlimited professional services. Additionally, Mr. Reiche argued that purchasers of concert tickets or artworks were not usually interested in making political contributions. Rather, the entertainer or artist, by donating valuable services, was actually making a contribution to support a favored candidate.

In AOR 1980-136, the Kennedy for President Committee requested an opinion on the use of artwork to settle debts. The Committee had acquired artwork volunteered by artists and had sold some of the artwork to raise funds for the primary campaign. With the campaign over, the Committee wished to exchange the remaining artwork for a reduction of debts owed to creditors. A draft response to AOR 1980-136, which followed AO 1980-34 as a precedent, failed to obtain the required four votes of the Commissioners.

### **Compliance Procedures**

The election law's requirements for processing complaints were the basic issue of three court cases.

In *Durkin for U.S. Senate Committee v. FEC*, the Court upheld the Commission's jurisdiction in resolving compliance matters within the time frame stipulated by the election law. The Durkin for Senate Committee, on October 27, 1980, requested the Court to take action to stop the

activities of a Defeat Durkin effort, which the Durkin Committee claimed had failed to register as a political committee and had accepted excessive contributions.

Three days earlier, the Durkin Committee had filed a complaint with the Commission and requested that the Court order the Commission to expedite the complaint. The Court held that it had no jurisdiction over the suit since the Act requires that the party accused in a complaint be given 15 days to demonstrate no action should be taken. The Court explained that the Commission was unable to act on the Durkin Committee's complaint until after the parties had responded or 15 days had elapsed. On October 31, 1980, the District Court denied the Committee's request and dismissed the suit.

*Common Cause v. FEC* concerned the interpretation of the law's requirement that the Commission act on complaints within 90 days.<sup>10</sup> In its suit filed in November 1978, Common Cause maintained that the Commission had acted contrary to law in not taking action within 90 days after Common Cause had filed a complaint. The complaint alleged that the national and State political action committees (PACs) of the American Medical Association (AMA) were affiliated committees and thus shared a common contribution limit per candidate, per election. Common Cause's complaint listed numerous instances where the combined contributions of the national and State PACs had exceeded the limits in the 1976 Congressional elections.

At the time Common Cause filed its suit, the Commission had entered into conciliation agreements with the national PAC and a few State PACs. But by the Spring of 1980, when the case was heard in a District Court, the Commission had entered into agreements with an additional 16 State PACs and was preparing to enter into 11 more agreements. The Court

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<sup>10</sup> The 1979 Amendments to the Act increased the time to 120 days.

noted this, as well as the fact that the Commission had broadened the scope of its initial investigation and, further, had begun investigating four similar complaints filed against AMA's PACs.

Common Cause nevertheless maintained that the Commission had acted contrary to law in not taking final action on its complaint within 90 days. The Commission, on the other hand, argued that the 90-day provision simply gave the Court power to decide after 90 days whether or not the Commission had acted contrary to law. The Court supported the Commission's interpretation and pointed out that Common Cause's original complaint required extensive investigation to obtain proof of the allegations. Therefore, the Court did not find the Commission's efforts to collect further evidence to be an abuse of discretion. The Court did, however, order the Commission to either enter into conciliation agreements with the remaining respondents within 30 days of the Court's ruling or bring suit against them. The Commission entered into agreements with the rest of the respondents within the time period, and the Court issued an order on June 13, 1980, dismissing the case.

In *Felice M. Gelman and Citizens for LaRouche, Inc. v. FEC*, filed on October 1, 1980, the Court required the Commission to follow the enforcement procedures outlined in the election law (Section 437g) when conducting an investigation of contributions submitted for primary matching funds (at least in the absence of other established procedures for such investigations). The Commission had argued that its investigation of LaRouche contributors was not governed by Section 437g since the investigation was made pursuant to the Presidential Primary Matching Payment Account Act. On October 27, 1980, the U.S. District Court for the District of Columbia enjoined the Commission from continuing its investigation without first notifying the LaRouche Committee of the legal and factual basis for the investigation.

### Constitutional Challenges to Section 441b

During 1980, the Commission continued to defend the constitutionality of Section 441b of the Federal Election Campaign Act. The provision prohibits corporations, labor organizations and national banks from making contributions or expenditures in connection with Federal elections.<sup>11</sup> The provision also places restrictions on the solicitation procedures used by separate segregated funds established and administered by corporations, labor organizations, trade associations and membership organizations. For example, a corporation or its separate segregated fund may solicit only stockholders, executive and administrative personnel and their families. This limitation on corporate solicitations was challenged as unconstitutional in *National Chamber Alliance for Politics v. FEC*. A recent ruling by the Court of Appeals for the District of Columbia affirmed the Commission's position that the case was not ripe for judicial consideration. On November 31, 1980, the Supreme Court denied the National Chamber's petition for the Court to consider the case. In *Bread Political Action Committee v. FEC*, the Appeals Court for the Seventh Circuit agreed with the Commission that the limitation placed on solicitations by an incorporated trade association (restricted to executive and administrative personnel of member corporations that have given prior approval) violated neither the First nor Fifth Amendment. The matter is now on appeal to the Supreme Court.

Other challenges to Section 441b during 1980 included:

- *California Medical Association (CMA) and California Medical Political Action Committee (CALPAC) v. FEC* was heard by the Court of Appeals (Ninth Circuit), which denied challenges to the First and Fifth Amendments. CMA, a nonprofit unincorpo-

<sup>11</sup> National banks and Congressionally authorized corporations are not permitted to make contributions or expenditures in connection with any election: local, State or Federal. 2 U.S.C. Section 441b(a).

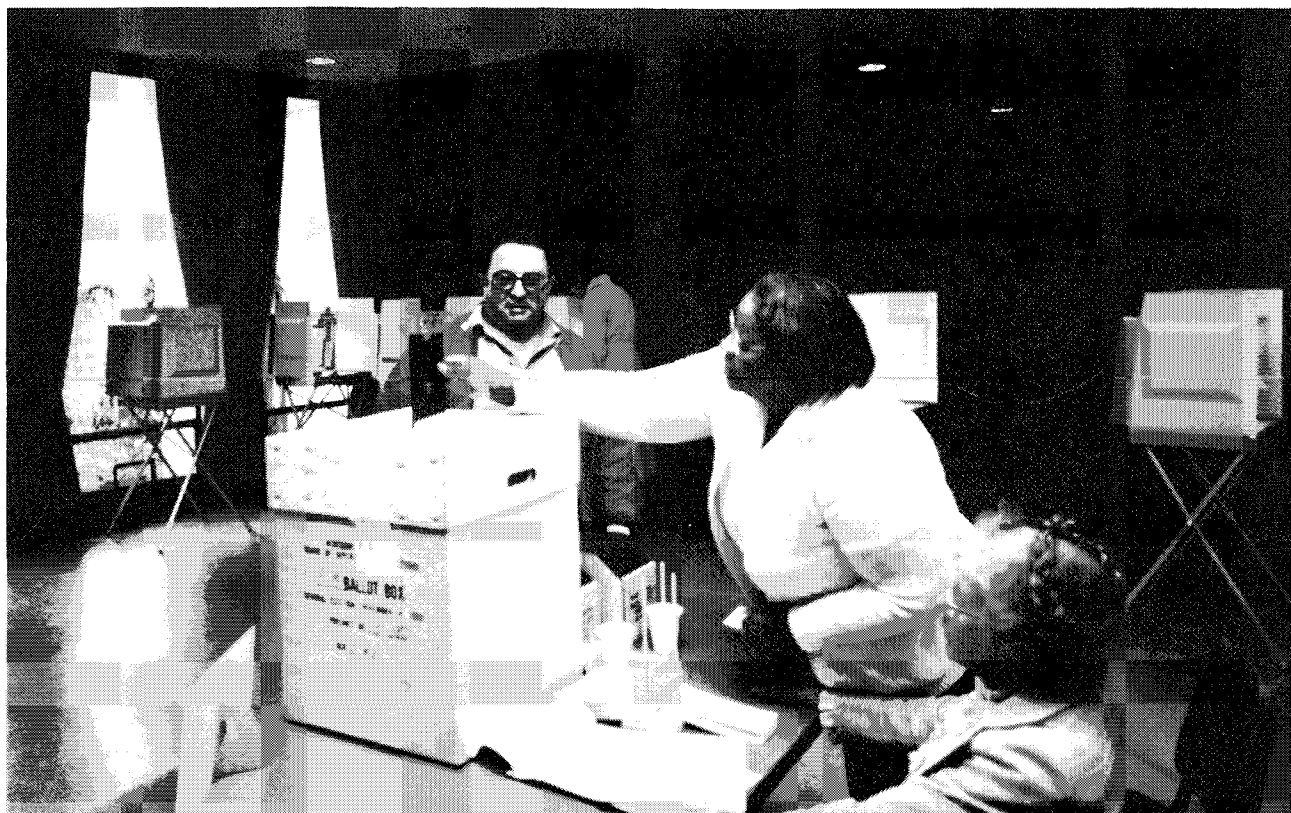
rated association, contended that the Section 441a limitation placed on CMA's contributions to CALPAC was an infringement of First Amendment rights. Secondly, CMA argued that Section 441b violated the equal protection provisions of the Constitution. Under Section 441b, corporations and labor organizations may give unlimited administrative support to their separate segregated funds, while CMA may support CALPAC only by contributing to it, and these contributions are subject to limits. CMA appealed the Court's decision to the Supreme Court, where oral argument was heard on January 19, 1981.

- *FEC v. T. Bertram Lance* was originally filed by the Commission to enforce its order requesting the deposition of Mr. Lance in

connection with an administrative enforcement case. On January 5, 1981, the Court of Appeals for the Fifth Circuit upheld the constitutionality of Section 441b's prohibition on contributions by national banks. The case is now on appeal to the Supreme Court.

- *FEC v. National Right to Work Committee* was filed by the Commission to enforce Section 441b limitations on solicitations by corporations without capital stock. The District Court for the District of Columbia upheld the constitutionality of the provision on April 24, 1980. The defendants appealed this judgment and briefs have been filed in the Court of Appeals (District of Columbia Circuit).

Voters today are more informed about the campaign finances of Federal candidates as a result of the election law's public disclosure provisions.



Stuart Krasner/UNIPHOTO



### Commissioners and Statutory Officers <sup>1</sup>

On December 18, 1980, the Commission unanimously elected Acting Chairman John Warren McGarry to serve a one-year term as Commission Chairman and Commissioner Frank P. Reiche to serve as Vice Chairman. Both terms began on January 1, 1981. Mr. McGarry, former Commission Vice Chairman, succeeded to Acting Chairman when Max L. Friedersdorf resigned from the Commission on December 16 to serve as Assistant to the President for Legislative Affairs in the Reagan administration. On January 2, 1981, President Carter named former Commissioner Vernon W. Thomson to serve an interim appointment as Commissioner to fill the vacancy created by Chairman Friedersdorf's resignation. Mr. Thomson was sworn in at the Commission by Chairman McGarry on January 5, 1981.

The December election of new officers marked a change in the Commission's procedures. Previously, the election of officers had occurred in May. The Commission decided to elect the Chairman and Vice Chairman in the last open meeting of December, with terms of office coinciding with the calendar year.

On August 21, 1980, the Commission appointed B. Allen Clutter, III, as Staff Director to fill the vacancy created by the resignation of Orlando B. Potter.

### Management Plan

Although the Commission based its FY 1981 Management Plan<sup>2</sup> on a tentative budget of \$9.410 million, the actual operating budget was \$9.283 million, the amount prescribed in a continuing resolution of the FY 1980 appropri-

ation. (The Commission originally expected an appropriation of \$9.283 million and requested a supplemental appropriation of \$612,350 to cover the 1980 October pay raise.) Until Congress determined the actual appropriation, the Commission held some programs in abeyance. The plan called for a reduction of staff through attrition, although an effort was made to spread the burden of staff reductions as equitably as possible. Staff attrition was designed to ensure sufficient resources to handle the peak activity generated by the 1980 elections and year-end reports (filed by all committees in January), while eventually reducing staff to minimum levels.

The 1981 Management Plan was based on several principles. First, priority was given to the Presidential election public funding program. To this end, the Audit Division shifted resources to ensure the completion of all Presidential audits as rapidly as possible.

Secondly, the Management Plan gave priority to program changes stemming from the amended election law. The Office of General Counsel's policy program, for example, required additional staff to comply with the statutory deadlines imposed on advisory opinion responses and to handle the increased number of requests for advisory opinions expected as a result of the Amendments to the Act. The plan also anticipated a closer working relationship between the Reports Analysis and Audit Divisions as a result of the audit selection process stipulated in the Amendments.<sup>3</sup>

Finally, the plan tried to preserve vital programs at a minimum cost. The Commission continued, for example, to enter into the computer summary data taken from all reports. However, in an effort to reduce the costs of data entry, the plan called for entering detailed information only for individual contributions of \$500 and over (rather than over \$200).

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<sup>1</sup> Biographical sketches of the Commissioners and statutory officers appear in Appendix 1.

<sup>2</sup> The Management Plan is prepared by the Commission's Office of Planning and Management in cooperation with office and division heads. It encompasses all the Commission's programs for the fiscal year: October 1980 – September 1981.

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<sup>3</sup> See page 30 for a description of the audit selection process.

The plan also substantially decreased the Clearinghouse contracting program, which provides technical information requested by State and local election officials. This reduction was mandated by the authorization language for FY 1981, which placed a ceiling of \$400,000 on Clearinghouse operations.

Limited resources precluded a campaign finance seminar program to acquaint political committees with the requirements of the law, but the plan did continue the Commission's policy of distributing free publications that help committees and candidates understand and comply with the election law.

#### **Internal Review**

The Planning and Management Office completed its second internal review, an evaluation of the Information Division<sup>4</sup> and the Clearinghouse on Election Administration.<sup>5</sup> Planning and Management conducted the review to determine whether the offices met their program objectives in a cost efficient way and to assist them in making improvements.

In its analysis of the Information Division's three branches — Public Communications, Publications and the Press Office — Planning and Management found that the Division had fulfilled its major function of providing information to candidates, committees and the general public and had effectively accommodated the informational needs of the media. In addition, Planning and Management offered suggestions on how the Division might more effectively assist the Commission's constituency in voluntary compliance with the election law. The Information Division implemented the following recommendations in 1980:

- The *Record* adopted a Q and A format for its "800 Line" column to make clear that the column provides answers to questions the Commission actually receives from the public. Additionally, the column began to appear more regularly.
- To devote more attention to the needs of State and local party organizations, the Division published a *Record Supplement* especially for their use and also prepared, for 1981 publication, a more detailed party guide.
- The Public Communications Office standardized routine letters to accelerate responses to common inquiries.
- To encourage timely filing of reports, prior notices (sent by Public Communications to committees to remind them of upcoming reporting obligations) carried an additional message that explained compliance action would be taken if committees failed to file timely reports.
- The Commission renovated the Press Office to allow more privacy of telephone conversations and briefings with visiting press.

In their assessment of the Clearinghouse, Planning and Management tried to determine if the Office fulfilled its mandated function "to serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections." Planning and Management concluded that the Clearinghouse was effectively using its limited resources to the maximum benefit of elections officials. The review recommended that the Clearinghouse, within the limits of a restricted budget, attempt to fund follow-up surveys of conferences and workshops to determine how attendees used the information presented.

#### **Labor/Management Relations**

Nineteen-eighty was the first full year of implementation of the collective bargaining agreement between the Commission and Chapter 204 of the National Treasury Employees Union. The new contract resulted in:

<sup>4</sup> For a summary of Commission testimony on the Information Division, see Appendix 7.

<sup>5</sup> See Appendix 6 on Clearinghouse Activities.

- More consistency in the handling of personnel policies and procedures;
- Improved working relationships within the Commission; and
- Easier access to the basic rules of personnel administration for the bargaining unit. The contract contained articles on a variety of personnel subjects, including merit selection and promotion procedures for positions within the bargaining unit.

In administering the contract, a Labor Management Relations Committee, composed of representatives from management and labor, discussed concerns of both parties over contract language and provisions of the 1978 Civil Service Reform Act. Meeting several times throughout the year, the committee arrived at understandings on health and safety inspections, building security, parking space for carpools, overtime compensation and internal training programs.

The Commission was one of the first Federal agencies to implement a new system for evaluating employee performance as required by the Civil Service Reform Act. In consultation with the union and employees, supervisors established performance standards for each position within the bargaining unit. The performance standards described the critical elements (i.e., major functions) of a given job and established competency levels ("outstanding" to "not acceptable") for the performance of each element. These quantitative and qualitative guidelines made the evaluation process a more consistent and impartial one.

At year's end, the Commission was taking steps to fill a vacancy for a full-time specialist to serve as Director of Personnel and Labor Relations and making plans for the renegotiation of the contract, which expires in July of 1981.

# Appendix 1

## Biographical Data on Commissioners and Statutory Officers

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### Commissioners

#### **Max L. Friedersdorf, Chairman** **Resigned December 16, 1980**

Mr. Friedersdorf, Chairman of the Commission, served as Staff Director of the Senate Republican Policy Committee from January 1977 until his appointment to the Commission in February 1979. A native of Indiana, Mr. Friedersdorf received his B.A. from Franklin College in 1952 and earned an M.A. from American University in 1970. He pursued a journalism career in Indiana before serving as administrative assistant and press secretary to former Congressman Richard L. Roudebush (R-Ind.) from 1961 to 1970. During 1970, he was Director of Congressional Relations for the Office of Economic Opportunity. From 1971 to 1977, Mr. Friedersdorf served in several White House posts. He was Deputy Assistant for Congressional Affairs to President Nixon from 1971 to 1974. He continued as Deputy Assistant to President Ford until 1975, when he became the President's Assistant for Legislative Affairs. Mr. Friedersdorf left the Commission on December 16, 1980, to accept the position of Special Assistant for Legislative Affairs to President-elect Reagan.

#### **John Warren McGarry, Vice Chairman** **April 30, 1983<sup>1</sup>**

Mr. McGarry, Vice Chairman of the Commission, was elected Commission Chairman for a one-year term beginning January 1, 1981. Mr. McGarry graduated cum laude from Holy Cross College in Massachusetts in 1952. He subsequently did graduate work at Boston University and obtained a Juris Doctor degree from Georgetown Law Center in 1956. From 1959 through 1962, Mr. McGarry was Assistant Attorney General of Massachusetts. In that capacity he served as both trial counsel and appellate advocate. Following his tenure in office, he combined private law practice with service as Chief Counsel for the Special Committee to Investigate Campaign Expenditures of the U.S. House

of Representatives. This Committee was created temporarily by special resolution every two years through 1972 in order to oversee House elections. From 1973 until his appointment to the Commission on October 25, 1978, Mr. McGarry served as Special Counsel on Elections to the Committee on House Administration of the U.S. Congress.

#### **Frank P. Reiche** **April 30, 1985**

Before his appointment to the Commission in July 1979, Mr. Reiche served as Chairman of the first New Jersey Election Law Enforcement Commission for six years. Prior to that, Mr. Reiche served in a variety of Republican party positions, including eight years as a Republican county committeeman. An attorney specializing in tax law, Mr. Reiche graduated from Columbia University Law School in 1959 and received a Master of Laws degree in taxation from New York University in 1966. Prior to that, he received his A.B. from Williams College in 1951 and an M.A. in Foreign Affairs from George Washington University in 1959. Mr. Reiche was with the Princeton firm of Smith, Stratton, Wise and Heher from 1962 until his appointment to the Commission. He was elected as Vice Chairman of the Commission for a one-year term beginning January 1, 1981.

#### **Robert O. Tiernan** **April 30, 1981**

Mr. Tiernan was Commission Chairman between May 1979 and May 1980. He served as a Democratic Member of Congress from Rhode Island for eight years and, prior to that, as a State legislator for seven years. He was born in Providence, Rhode Island, and graduated from Providence College and Catholic University Law School. Mr. Tiernan has been admitted to practice in all Federal courts, the State of Rhode Island and the District of Columbia. He has held various national and State party positions. Originally appointed for two years, he received a five-year term upon reconstitution of the Commission. In August 1980, the American Bar Association appointed Mr. Tiernan to serve a one-year term

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<sup>1</sup> Term expiration date.

as a member of its Advisory Commission to the Special Committee on Election Law and Voter Participation.

**Joan D. Aikens**  
**April 30, 1981**

Mrs. Aikens served as Commission Chairman between May 1978 and May 1979. She was formerly Vice President of Lew Hodges/Communications, a public relations firm located in Valley Forge, Pennsylvania. From 1972 until 1974, she was president of the Pennsylvania Council of Republican Women and served on the Board of Directors of the National Federation of Republican Women. A native of Delaware County, Pennsylvania, Mrs. Aikens has been active in a variety of volunteer organizations. She received her B.A. from Ursinus College, Collegeville, Pennsylvania. Her original appointment to the Federal Election Commission in 1975 was for a one-year term. She was reappointed for five years when the FEC was reconstituted.

**Thomas E. Harris**  
**April 30, 1985**

Mr. Harris was Commission Chairman between May 1977 and May 1978. Before serving on the Commission, he was associate general counsel to the AFL-CIO in Washington, D.C., from 1955 to 1975. He had held the same position with the CIO from 1948 until it merged with the AFL in 1955. Prior to that, he was an attorney in private practice and with various government agencies. A native of Little Rock and a 1932 graduate of the University of Arkansas, Mr. Harris is a 1935 graduate of Columbia University Law School, where he was on the *Law Review* and was a Kent Scholar. After graduation, he clerked one year for Supreme Court Justice Harlan F. Stone. He was originally appointed to the Commission for a four-year term and upon reconstitution received a three-year appointment. In 1979, President Carter reappointed him and, on June 19, 1979, the U.S. Senate reconfirmed Mr. Harris for a six-year term.

**Vernon W. Thomson**  
**Interim Appointment<sup>2</sup>**

A former member of Congress from Wisconsin (1961-75), Mr. Thomson was one of the original Commissioners of the FEC, serving between 1975 and 1979. He was Chairman of the Commission between 1976 and 1977. Before his election to Congress in 1960, Mr. Thomson served as Governor of Wisconsin (1957-59). He was a member of the Wisconsin State Assembly for 16 years, serving three consecutive terms as Speaker. In addition, he served three terms as Attorney General of Wisconsin and was elected Assistant District Attorney of Richland County and City Attorney and Mayor of Richland Center. He holds a B.A. from the University of Wisconsin and received his law degree from the University of Wisconsin Law School.

## **Ex Officio Commissioners**

**Edmund L. Henshaw, Jr.**

Mr. Henshaw, an Ex Officio Member of the Commission, was elected Clerk of the House of Representatives on December 17, 1975. Prior to that, he served as Executive Director of the Democratic National Congressional Campaign Committee from 1972 to 1975, and as Research Director of the Democratic National Congressional Campaign Committee from 1955 to 1972. He received a B.S. degree from the University of Maryland in 1954 and attended George Washington University Law School from 1955 to 1956.

Douglas Patton, attorney, continued to serve as Special Deputy to the Clerk of the House at the Commission.

**Joseph Stanley Kimmitt<sup>3</sup>**

Mr. Kimmitt, an Ex Officio Member of the Commission, was elected Secretary of the Senate in April 1977. He previously served as Secretary

<sup>2</sup> Mr. Thomson was appointed to fill the vacancy created by Commissioner Max L. Friedersdorf's resignation.

<sup>3</sup> Mr. Kimmitt was replaced by William F. Hildenbrand, who was elected Secretary of the Senate on January 5, 1981.

of the Majority for the Senate (1966-77) and as Administrative Assistant to the Majority Leader of the Senate. A native of Great Falls, Montana, he holds a B.S. degree in political science from Utah State University. Mr. Kimmitt also attended the University of Montana and did graduate work at George Washington University. Mr. Kimmitt was inducted as a private in the U.S. Army in 1941 and retired as a colonel in 1966.

School in 1965. Prior to joining the Commission in January 1976, Mr. Steele was a staff attorney with the Appellate Court Branch of the National Labor Relations Board.

Harriet Robnett, attorney, served as Special Deputy to the Secretary of the Senate at the Commission.<sup>4</sup>

## **Statutory Officers**

### **B. Allen Clutter, III, Staff Director<sup>5</sup>**

Before joining the Commission, Mr. Clutter was the Executive Director of the Minnesota Ethical Practices Board and also served as faculty member of the Hamline University Law School. Prior to this, Mr. Clutter was an Assistant Professor at the U.S. Air Force Academy and served with the Air Force Administrative Units in Thailand and California. He also worked with the World Press Institute of Macalester College in St. Paul, Minnesota. A native of Oskaloosa, Iowa, he received a graduate degree in geography from Eastern Michigan University and attended business administration courses at the University of Colorado. Mr. Clutter was listed among the Outstanding Young Men in America in 1978.

### **Charles N. Steele, General Counsel**

Mr. Steele became General Counsel in December 1979, after serving as Acting General Counsel during November 1979. Before this, he was Associate General Counsel for Enforcement and Litigation from April 1977 through October 1979. Mr. Steele received an A.B. from Harvard College in 1960 and an LL.B. from Harvard Law

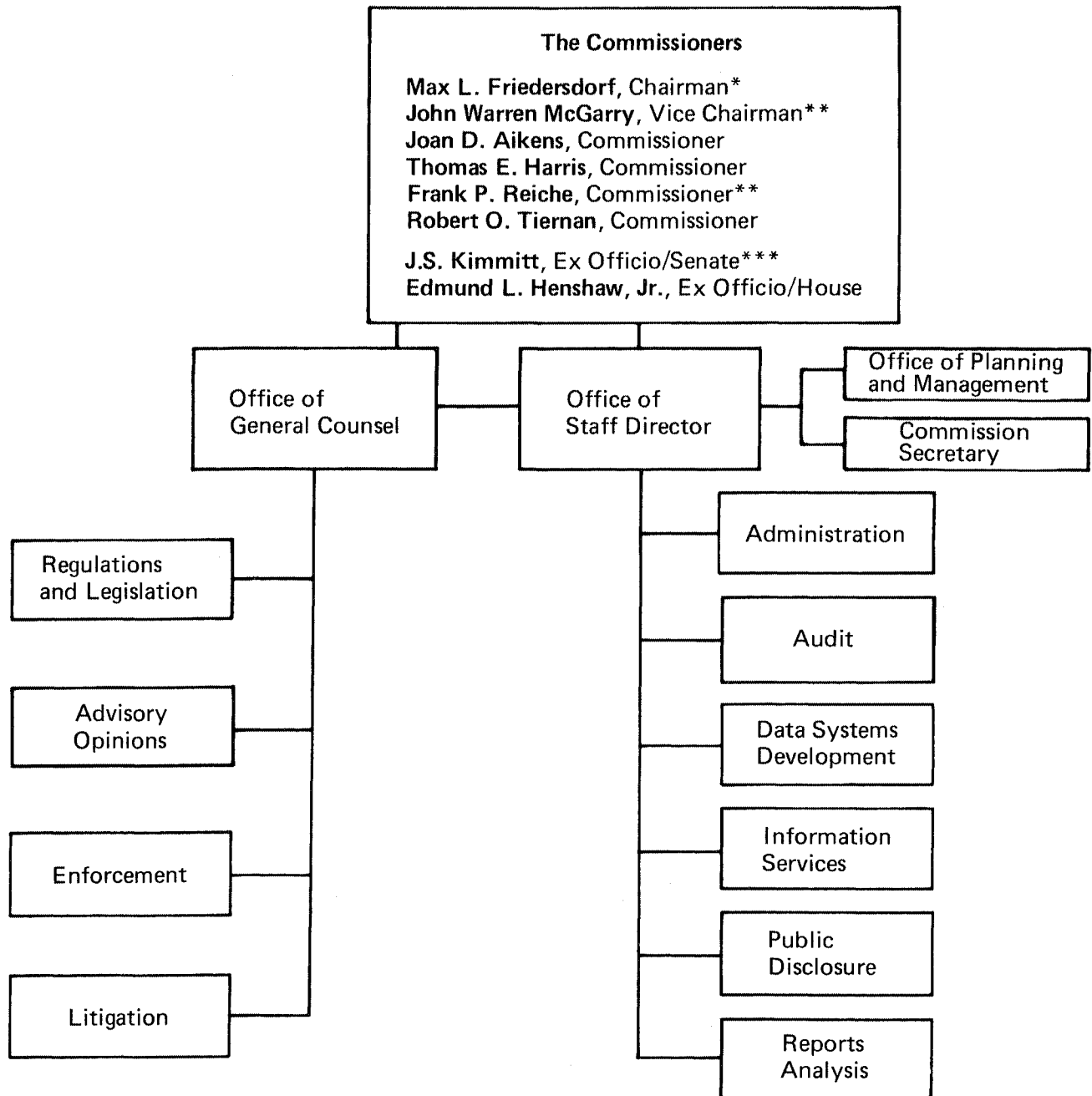
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<sup>4</sup> Thomas J. Josefiak, appointed as Special Deputy to Mr. Hildenbrand, replaced Ms. Robnett.

<sup>5</sup> Orlando B. Potter, former Staff Director, resigned on July 4, 1980.

# Appendix 2 FEC Organization Chart

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\*Mr. Friedersdorf resigned on December 16, 1980. Filling his seat as an interim appointee, Vernon W. Thomson began to serve as Commissioner on January 5, 1981.

\*\*Mr. McGarry was elected Commission Chairman, and Mr. Reiche, Vice Chairman, on December 18, 1980. Their terms began on January 1, 1981.

\*\*\*Mr. Kimmitt was replaced by William F. Hildenbrand, who was elected Secretary of the Senate on January 5, 1981.

## January

- 3 — Commission determines Edward Kennedy and George Bush are eligible for primary matching fund payments.\*
- 8 — 1979 Amendments to the Federal Election Campaign Act of 1971 (as amended in 1974 and 1976) become law (Pub. L. No. 96-187).
- 13-15 — National Clearinghouse on Election Administration holds Regional Seminar on Election Administration in Winston-Salem, North Carolina.
- 15 — Commission determines that Ronald Reagan and Robert Dole are eligible for primary matching fund payments.
  - Public Communications Office holds Campaign Finance Seminar in Winston-Salem, North Carolina.
- 21 — Commission determines that Philip Crane is eligible for primary matching fund payments.
- 22 — Commission determines that Edmund Brown is eligible for primary matching fund payments.
  - Illinois special election.
- 25 — Commission releases *Interim Report Number 1*, the first in the continuing series, *FEC Reports on Financial Activity, Presidential Pre-Nomination Campaigns*.
- 31 — Commission adopts procedures to implement special election notification requirements stipulated in the 1979 Amendments.
  - 1979 year-end report due.

## February

- 2 — U.S. Court of Appeals for the Second Circuit dismisses a suit filed by the FEC against Central Long Island Tax Reform Immediately (CLITRIM).

- 5 — Commission determines that John Anderson is eligible for primary matching fund payments.
- 7 — Commission adopts interim enforcement procedures implementing the 1979 Amendments.
- 13 — Commission certifies remainder of the Democratic National Committee's full entitlement of \$4,416,000 to finance the Democratic National Convention.
- 19 — U.S. Supreme Court denies a petition for *certiorari* in three cases brought by Lyndon LaRouche and Leroy Jones against the Commission.
  - In consultation with the Commission, Comptroller of the Currency issues a circular to all national banks notifying them of the Act's prohibitions on contributions and expenditures.
- 22 — Commission releases *FEC Reports on Financial Activity, Interim Report Number 2* on Presidential campaigns.
- 27 — Commission certifies remainder of the Republican National Committee's full entitlement of \$4,416,000 to finance the Republican National Convention.
- 28 — Commission transmits to Congress proposed regulations to implement the 1979 Amendments to the Federal Election Campaign Act. (See April 1.)

## March

- 1 — Commission publishes *FEC Record Supplement* summarizing the 1979 Amendments to the Federal Election Campaign Act.
- 5 — Commission terminates the primary matching fund eligibility of Howard Baker.
- 7 — Commission sends new Forms 1, 2, 3, and 3X to Congress.
- 13 — Chairman Robert O. Tiernan, accompanied by Vice Chairman Max L. Friedersdorf, testifies on election administration costs and postage-free mailing of absentee ballots before the House Subcommittee on Postal Operations and Services.

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\* The Commission certified primary matching fund eligibility to three candidates in 1979: Howard Baker on November 1, Jimmy Carter on November 20 and Lyndon LaRouche on December 18.



## Appendix 3

### Chronology of Events, 1980

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- 17 — Commission promulgates new Forms 1, 2, 3 and 3X.
- 21 — Commission releases *FEC Reports on Financial Activity, Interim Report Number 3* on Presidential campaigns.
- 26 — Chairman Robert O. Tiernan and Commissioner Frank P. Reiche testify before the Senate Rules Committee on the FY 1981 budget authorization request.
- 27 — Commission terminates the primary matching fund eligibility of Robert Dole.

#### April

- 1 — Commission prescribes new regulations implementing the 1979 Amendments to the Federal Election Campaign Act.
  - Commission prescribes new regulations governing the funding and sponsorship of candidate debates.
- 3 — Commission terminates the primary matching fund eligibility of Edmund Brown and Philip Crane.
- 9 — Pennsylvania special election.
- 10 — Commission transmits to Congress revised regulations governing the suspension of primary matching fund payments to Presidential candidates. (See July 3.)
  - Commission transmits to Congress its annual report on activities performed in compliance with the Freedom of Information Act.
  - U.S. District Court for the District of Columbia issues a consent judgment in which the defendants, Marjorie Bell, the Bell for Senate Committee and its two treasurers, agree to pay a civil penalty.
- 14 — U.S. Supreme Court unanimously affirms two lower court decisions upholding the constitutionality of the Presidential Election Campaign Fund Act challenged by the Republican National Committee in a suit brought against the Commission.

- U.S. District Court for the District of New Jersey issues a consent judgment in which Jeffrey Bell agrees to pay a civil penalty.
- 15 — First quarterly report due.
- 16 — U.S. District Court for the Eastern District of Michigan, Southern District, approves a consent decree in which Gene Williamson agrees to pay a civil penalty.
- 17 — Commission terminates the primary matching fund eligibility of Lyndon LaRouche.
- 24 — U.S. Court for the District of Columbia grants the Commission's motion for summary judgment in the consolidated suits the Commission and the National Right to Work Committee had filed against each other.
- 25 — Commission releases *FEC Reports on Financial Activity, Interim Report Number 4* on Presidential campaigns.

#### May

- 1 — Commission approves a revised policy for accepting invitations to address public gatherings.
  - National Clearinghouse on Election Administration announces the availability of *Election Directory '80* and *Bilingual Elections Services Study*, Volume II.
  - Commission's library issues a *Campaign Finance and Federal Election Bibliography*.
- 13 — Commission publishes in the *Federal Register* revised Freedom of Information Act regulations and new regulations covering access to public records. (See June 12.)
- 14 — Commission unanimously elects Vice Chairman Max L. Friedersdorf as its new Chairman and Commissioner John Warren McGarry as its new Vice Chairman.
  - Commission transmits to Congress proposed regulations governing contri-

butions to and expenditures by delegates to national nominating conventions. (See August 7.)

- 17 – Louisiana special election.
- 21 – Commission testifies before the House Administration Committee's Task Force on Audits and Reports Review.
- 21-22 – National Clearinghouse on Election Administration conducts two workshops on Federal election responsibilities in conjunction with the annual meeting of the International Institute of Municipal Clerks in Toronto, Canada.
- 23 – Commission releases *FEC Reports on Financial Activity, Interim Report Number 5* on Presidential campaigns.
- 28 – Commission denies a request to reestablish matching fund eligibility for Lyndon LaRouche.

#### June

- 1 – Commission transmits to the President and Congress its *Annual Report* for 1979.
- 3 – West Virginia special election.
- 12 – Commission's revised Freedom of Information Act regulations and new regulations governing access to public records become effective.
  - Commission sends new Forms 4, 5 and 7 to Congress (promulgated 10 legislative days later).
- 13 – Commission transmits to Congress proposed revised regulations governing the public financing of Presidential general election campaigns. (See September 5.)
  - U.S. District Court for the District of Columbia dismisses a suit brought by Common Cause against the Commission.
- 18 – Commission testifies before the House Administration Committee's Task Force on Enforcement.
- 20 – Commission releases *FEC Reports on Financial Activity, Interim Report Number 6* on Presidential campaigns.

- 30 – U.S. District Court for the District of Columbia dismisses a suit filed by Stewart Mott, Rhonda Stahlman and the National Conservative Political Action Committee (NCPAC) against the Commission.

- Commission testifies before the House Administration Committee's Task Force on Information and Public Disclosure.

#### July

- 3 – Commission prescribes revised regulations governing the suspension of primary matching fund payments to Presidential primary candidates.
- 4 – Commission Staff Director Orlando B. Potter resigns.
- 10 – Commission approves revised nonfiler procedures.
- 14 – Commission introduces new computer indexes on independent expenditures.
  - Republican National Convention opens in Detroit.
- 15 – Second quarterly report due.
- 22 – U.S. District Court of Appeals for the District of Columbia affirms the Commission's determination that Lyndon LaRouche had failed to reestablish matching fund eligibility.
- 24 – Commission certifies \$29,440,000 in in Federal funds for the general election campaign of Republican Presidential nominee Ronald Reagan and his running mate, George Bush.
- 29 – Commission releases *FEC Reports on Financial Activity, Interim Report Number 7* on Presidential campaigns.
- 30 – Commission Chairman Max L. Friedersdorf testifies on the Clearinghouse *Bilingual Election Services Study* before the House Subcommittee on Civil and Constitutional Rights.
- 31 – Semiannual report due for committees not active in the election year.

**August**

- 1 – Commission releases three new publications: *FEC Record Supplement for State and Local Party Organizations*; *Campaign Guide for Congressional Candidates and Committees*; and *House and Senate Bookkeeping Manual*.
- 5 – Michigan special primary election.
- 7 – Commission prescribes new regulations on contributions to and expenditures by delegates to national nominating conventions.
- 11 – Democratic National Convention opens in New York City.
- 21 – Commission certifies \$29,440,000 in Federal funds for the general election campaign of Democratic Presidential nominee Jimmy Carter and his running mate, Walter Mondale.
  - Commission names B. Allen Clutter, III, as Staff Director.
- 28 – U.S. District Court for the District of Columbia denies the Commission's motion for summary judgment in the suit the Commission had filed against Americans for Change and two other independent expenditure committees.

**September**

- 2 – Commission adopts procedures for approval of requests to use computerized formats for reporting itemized receipts and disbursements.
- 5 – Commission prescribes revised regulations governing the public financing of Presidential general election campaigns.
- 9 – U.S. District Court for the District of Columbia dismisses the suit that John Anderson had filed against the Commission.
- 12 – Commission issues revised guidelines on acceptance of contributions from unregistered organizations (Directive Number 19 Revised).
- 25 – Commission adopts procedures for expediting complaints filed within

30 days of the November 4 general election.

- Commission releases *FEC Reports on Financial Activity, Interim Report Number 9* on 1979-1980 activity of party and nonparty political committees.

**October**

- 1 – Commission releases *FEC Reports on Financial Activity, Interim Report Number 8* on 1979-1980 activity of House and Senate campaigns.
  - Commission's Public Communications Office extends office hours until election day.
- 15 – Third quarterly report due.
  - Commission's Public Records Office extends office hours until election day.
- 23 – Pre-general election report due.
- 27 – U.S. District Court for the District of Columbia rules in favor of the plaintiffs in the suit filed by Felice Gelman and Citizens for LaRouche, Inc. against the Commission.
  - Commission appoints Alice K. Helm as Deputy General Counsel.
- 29 – U.S. District Court for the District of Columbia grants the Commission's motion to dismiss the suit filed by Fred Ames against the Commission.
- 31 – U.S. District Court for the District of New Hampshire dismisses the suit filed by the Durkin for U.S. Senate Committee against the Commission.

**November**

- 3 – Commission adopts new procedures for certifying public funds to new party Presidential candidates.
- 4 – Election Day.
  - Michigan special election.
- 13 – Commission certifies \$4,164,906.24 in Federal funds to the general election campaign of new party Presidential candidate John Anderson and his running mate, Patrick Lucey.

- U.S. Supreme Court denies the Commission's petition for *certiorari* in its suit against the AFL-CIO.
- 30 – U.S. Supreme Court denies a petition for *certiorari* filed by the National Chamber Litigation Center (a legal arm of the Chamber of Commerce) in the National Chamber Alliance for Politics suit against the Commission.

#### December

- 4 – Post-general election report due.
- 16 – Commissioner Max L. Friedersdorf resigns to accept position as Special Assistant for Legislative Affairs to President-elect Reagan.
- 18 – Commission unanimously elects John Warren McGarry as its new Chairman and Commissioner Frank P. Reiche as its new Vice Chairman.
  - Commission adopts new dates for election of officers.
- 31 – Commission releases official vote totals for the 1980 Presidential election compiled by the National Clearinghouse on Election Administration.

## Appendix 4 The FEC's Budget

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In fiscal year 1980, the Commission received an annual budget appropriation of \$8,646,000 plus a supplemental appropriation of \$300,000 to compensate for the October 1979 cost-of-living increase. These monies were expended during the fiscal year as follows:

Commission and Staff Salaries, Including Benefits . . . . .	\$6,462,187
Travel . . . . .	219,333
Transportation and Motor Pool . . . . .	10,250
Commercial Space . . . . .	11,917
Equipment Rental . . . . .	206,120
Printing . . . . .	349,248
Contracts . . . . .	738,486
Administrative Expenses . . . . .	62,820
Supplies . . . . .	123,411
Library Materials . . . . .	23,172
Telephone, Telegraph . . . . .	168,618
Postage . . . . .	101,453
Space Rental . . . . .	364,308
Equipment Purchases . . . . .	41,435
GSA, Services, Other . . . . .	56,982
<b>TOTAL</b>	<b>\$8,939,740*</b>

During most of fiscal year 1981, the Commission operated on a continuing resolution of the fiscal year 1980 budget (\$9,283,000). Based on the continuing resolution, plus an expected supplemental appropriation to compensate for the October 1980 cost-of-living increase, expenditures were budgeted as follows:

Commission and Staff Salaries, Including Benefits . . . . .	\$6,981,034
Travel . . . . .	221,188
Transportation and Motor Pool . . . . .	6,859
Commerical Space . . . . .	11,800
Equipment Rental . . . . .	192,359
Printing . . . . .	324,231
Contracts . . . . .	753,967
Administrative Expenses . . . . .	58,616
Supplies . . . . .	100,850
Library Materials . . . . .	44,905
Telephone, Telegraph . . . . .	171,306
Postage . . . . .	70,000
Space Rental . . . . .	368,446
Equipment Purchases . . . . .	25,000
Training . . . . .	27,295
GSA, Services, Other . . . . .	53,000
<b>TOTAL</b>	<b>\$9,410,856</b>

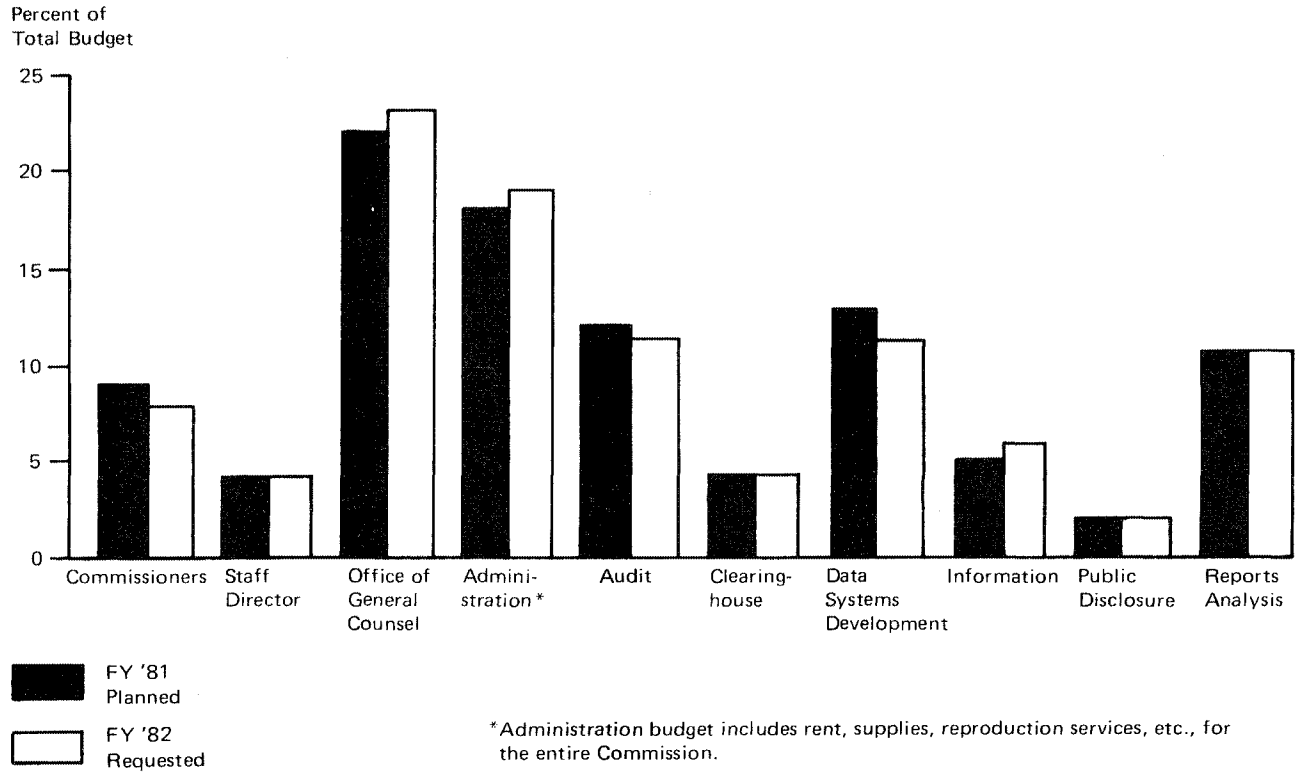
An appropriation of \$11,143,285 has been requested for fiscal year 1982.

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\*Unexpended funds were returned to the U.S. Treasury.

### Budget Allocation

The graph below compares the budget allocation of resources among Commission divisions for Fiscal Years 1981 (planned) and 1982 (requested).



# Appendix 5 Statistics on Commission Operations

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## Summary of Disclosure Files

	Total Filers Existing in 1980	Filers Terminated as of 12/31/80	Filers Waived as of 12/31/80	Continuing Filers as of 12/31/80	Number of Reports and Statements in 1980	Gross Receipts in 1980	Gross Expenditures in 1980
<b>Presidential</b>					3,205	\$162,289,030	\$155,821,594
Candidates	307	230	9	68			
Committees	248	68	0	180			
<b>Senate</b>					6,209	\$ 85,238,712	\$ 93,190,978
Candidates	643	273	6	364			
Committees	691	220	0	471			
<b>House</b>					26,099	\$120,443,620	\$118,616,360
Candidates	2,923	1,154	56	1,713			
Committees	2,678	828	0	1,850			
<b>Party</b>	834	243	0	591	6,681	\$197,075,615	\$205,803,531
National Level Committees	81	17	0	64			
State Level Committees	247	52	0	195			
Local Level Committees	454	153	0	301			
Convention Committees	6	0	0	6			
Delegates	46	21	0	25			
<b>Nonparty</b>	2,777	226	0	2,551	37,646	\$ 84,548,985	\$ 97,956,149
Labor Committees	343	46	0	297			
Corporate Committees	1,256	52	0	1,204			
Membership, Trade & Other Committees	1,178	128	0	1,050			
<b>Communication Cost Filers</b>	42	0	0	42	107	N/A	\$ 1,599,450
<b>Independent Expenditures by Persons Other Than Political Committees</b>	355	139	0	216	1,537	N/A	\$ 11,235,247

## FEC Regulations Prescribed in 1980

Regulations*	Date Sent to Congress	Federal Register Publication	Date Prescribed** by the Commission
<b>11 CFR Parts 100, 110 and 114</b> Candidate Debates	12/27/79	12/27/79 (45 <i>Fed. Reg.</i> 76734)	4/1/80
<b>11 CFR Parts 100-106, 108-114 and 9008</b> Implementing 1979 Amendments to the Federal Election Campaign Act	2/28/80	3/7/80 (45 <i>Fed. Reg.</i> 15080)	4/1/80***
<b>11 CFR Part 4</b> Public Records and the Freedom of Information Act	Not Applicable	5/13/80 (45 <i>Fed. Reg.</i> 31291)	6/12/80
<b>11 CFR Part 5</b> Access to Public Disclosure Division Documents	Not Applicable	5/13/80 (45 <i>Fed. Reg.</i> 31292)	6/12/80
<b>11 CFR 9033.9</b> Suspension of Primary Matching Fund Payments	4/10/80	4/15/80 (45 <i>Fed. Reg.</i> 25378)	7/3/80
<b>11 CFR Parts 100 and 110</b> Contributions to and Expenditures by Delegates to National Nominating Conventions	5/14/80	5/23/80 (45 <i>Fed. Reg.</i> 34865)	8/7/80
<b>11 CFR Parts 100, 106, 110, 140-146 and 9001-9007</b> Public Financing of Presidential General Election Campaigns	6/13/80	6/27/80 (45 <i>Fed. Reg.</i> 43371)	9/5/80

\*The chart lists all revisions to FEC regulations prescribed in 1980.

\*\*The Commission may prescribe its regulations 30 legislative days after it has transmitted them to Congress, provided neither the House nor the Senate disapproves them during this period.

\*\*\*A special provision expediting this set of regulations (§303 of Pub. L. No. 96-187) enabled the Commission to prescribe them 15 legislative days after they were sent to Congress.



During 1980, the Commission's National Clearinghouse on Election Administration fulfilled its mission by collecting and disseminating information on the electoral process, by furnishing assistance to election officials and by publishing the results of Clearinghouse research on the administration of Federal elections. This year, the Commission testified before two House subcommittees on areas researched by the Clearinghouse.

### Testimony Before Congress

#### Testimony on Election Costs and Absentee Ballot Systems

On March 13, 1980, Commissioner Robert O. Tiernan, then Commission Chairman, testified before the House Subcommittee on Postal Operations and Services on election administration costs of postage-free mailing of absentee ballots. Commissioner Tiernan was accompanied by Commissioner Max L. Friedersdorf, then Commission Vice Chairman, Dr. Gary Greenhalgh, Assistant Staff Director for Information and Director of the National Clearinghouse on Election Administration, and William Kimberling, Deputy Director of the Clearinghouse.

In his testimony, Mr. Tiernan noted that, according to Clearinghouse research studies, State and local governments would spend close to \$300 million for administering the 1980 elections. He went on to predict that such governments will absorb close to \$1 billion in election administration costs between 1978 and 1981.

In discussing benefits of proposed legislation for a postage-free absentee ballot system, Commissioner Tiernan said that the system would increase the return of absentee ballots. He cited as examples LaSalle County, Illinois, and Pima County, Arizona, which both have postage-free systems, and Los Angeles County, California, which does not. "LaSalle and Pima Counties have a return rate of 93 percent on absentee ballots and Los Angeles County has only 69 percent," he said. He also noted that the proposed

postage-free system would benefit home-bound persons, such as the elderly and handicapped, who find it as difficult to go to the post office as they do to go to the polls on election day.

#### Testimony on Bilingual Study

On July 30, 1980, Chairman Max L. Friedersdorf testified before the House Subcommittee on Civil and Constitutional Rights on the *Bilingual Election Services* report, which was based on a multiyear study of bilingual election practices conducted by the University of New Mexico under contract to the Commission's Clearinghouse. (See page 61 for a description of the study.)

Mr. Friedersdorf explained that the primary purpose of the study was to provide local election officials with a broad range of suggestions for designing programs to administer bilingual elections. The study did not, however, attempt to assess the need for or success of the bilingual provisions of the 1975 Voting Rights Act; nor did it measure the costs or effectiveness of such programs.

### General Information Activities

The Clearinghouse answered well over 1,000 inquiries prompted by election-year interest in voter registration and voting procedures, including absentee ballots. There were similar demands for information on the Electoral College and other less well known features of the election process. In response to foreign interest in the American electoral process, the Clearinghouse briefed over 500 foreign visitors directed to the Commission by the Department of State. After the November elections, the Clearinghouse compiled and released election returns, as certified by State election officials, for all Federal offices, including the Presidential race.

### Assistance to Election Officials

The Clearinghouse continued to provide support services to State and local election officials and

State legislators through its research programs and workshops. The popularity of the regional conferences on election administration, a 1979 project, led to the development of a continuing program of selected workshops on Federal election responsibilities for individual States and election-related associations. Additionally, the Clearinghouse logged over 3,000 calls and 1,000 letters from officials around the nation.

## **Publications**

The Clearinghouse continued to conduct research projects on topics of special concern to election officials. The following publications — all available at cost to the public — include both ongoing studies and the final products of completed research.

### **Continuing Reports**

*Election Law Updates* is a quarterly series, cumulative through the calendar year, which summarizes all election code changes in each of the 50 States. The series is designed to provide up-to-date election code information to State legislators, court officials and election administrators.

*Election Case Law* reports, a quarterly series cumulative through the calendar year, summarizes election cases in the State and Federal courts. The reports provide updates of judicial developments pertinent to elections.

*Campaign Finance Law* is an annual report summarizing campaign finance laws in each of the States as well as at the Federal level. The report also provides a convenient chart summary of State and Federal requirements.

*Election Directory* is an annual report which summarizes the responsibilities of each State's chief election official, election board or commission. Names, addresses and telephone numbers of State election officials, offices and related legislators are also provided.

### **Studies Currently Underway**

*Training Election Officials* suggests methods for training poll workers, deputy registrars and chief election officials for election day. It is a "how-to" volume that will assist State and local officials in designing effective training programs.

*Registration File Maintenance* will focus on improving the accuracy of voter registration lists around the country. Product manuals will offer concrete guidance in adding, deleting, changing and purging file entries. Emphasis will be placed on verifying these steps by both manual and automated file systems.

*Voter Information and Education* will examine existing State and local information and education programs and will consider other vehicles for communication. The resulting manuals will help State and local officials develop effective education and information programs.

### **Completed Topical Reports**

The following reports, previously listed, are still available.

*Voting Systems* is a three-volume report on voting equipment currently on the market. Volume I describes each device in detail and offers local officials step-by-step procedures for defining equipment needs and procuring equipment. Volume II summarizes representative State codes with regard to voting equipment acquisition. Volume III offers recommendations for drafting such legislation.

*Statewide Registration Systems 1 & 2* is a report on computerized statewide voter registration systems. Volume I examines problems involved in implementing a statewide system and offers suggestions for overcoming them. Volume II describes in detail the forms, procedures, outputs and variations on the basic statewide computerized system.

*Contested Elections and Recounts* is a three-volume analysis of the laws and procedures

governing contested elections and recounts for Federal offices. Volume I examines those issues and functions within the Federal government's purview and makes recommendations for improving the handling of contested elections at the Federal level. Volume II examines State issues and options and makes recommendations for improving the State handling of such cases. Volume III summarizes laws related to contested elections in each of the States and at the Federal level.

*Ballot Access* is a four-volume report on how candidates gain access to the ballot for Federal office in each of the States. Volume I identifies central administrative issues and problems and makes recommendations for improving the process. Volume II describes the administrative process in each State. Volume III details State legal memoranda and makes recommendations for improving the legal process. Volume IV briefly summarizes ballot access requirements for Federal office in each State.

*Mail Registration Systems* discusses problems involved in implementing a mail registration system. In addition to a general description of how mail registration systems operate, the report offers practical suggestions for overcoming difficulties.

*Bilingual Election Services* is a three-volume report on providing election services in languages other than English. Volume I summarizes such services since 1975. Volume II provides a glossary of common election terms in English along with their Spanish and dialectal equivalents. Volume III is a manual for local election officials. It offers practical advice on ways to identify the language problems in a jurisdiction and provide bilingual registration and balloting services.

*Election Administration* is a four-volume set introducing program planning, management and financial control concepts into local election administration. Volume I provides an overview of election functions and tasks and introduces

the notion of a management cycle. Volume II focuses on planning, provides detailed task/activity checklists and flow diagrams, and demonstrates how tasks can be assigned. Volume III introduces a chart of accounts and demonstrates how budgets can be prepared and costs monitored by applying the chart to each election function. Volume IV is a set of legal memoranda summarizing State code processes with regard to administrative and budgeting responsibilities.

On three occasions in 1980, Commission Chairman Max L. Friedersdorf, accompanied by Vice Chairman John Warren McGarry, testified before House Administration Committee oversight task forces.<sup>1</sup> The Commission testimony summarized past and present activity in audits, reports review and enforcement. Testimony on information programs and public disclosure addressed specific topics selected by the task force.

### **Testimony Before the Task Force on Audits and Reports Review**

On May 21, 1980, Chairman Friedersdorf testified on the Commission's audit and reports review policy. After describing how the Commission's procedures have evolved over the past five years, Mr. Friedersdorf discussed problems the Commission has confronted and overcome. He especially noted improvements engendered by the Arthur Andersen review of September 1979.<sup>2</sup>

The Chairman pointed out developments that were the outgrowth of the Andersen study:

1. The Commission has adopted as its major audit objective an attempt to expand audit coverage by identifying areas of the greatest risk of noncompliance, by streamlining audit procedures, and by focusing on matters involving questions of material compliance with the election law;
2. The Commission has allocated its limited resources to more significant problems in recordkeeping, reporting and compliance by adopting materiality thresholds below which compliance matters are not pursued;
3. The Commission has strengthened personnel resources by raising the salary for entry-level auditors to attract qualified graduates and by providing audit staff with both in-house and outside specialized training.

Mr. Friedersdorf also summarized Commission procedures for carrying out threshold audits of primary candidates receiving public funds and explained the internal deadlines established to expedite public release of Presidential audits.<sup>3</sup>

Finally, he noted the Commission has implemented a two-track mechanism for non-Presidential audits, which imposed strict deadlines for public release of audit reports: 12 weeks after fieldwork for reports with unresolved legal issues and 10 weeks for other reports.

### **Testimony Before the Task Force on Enforcement**

Chairman Friedersdorf testified on the Commission's enforcement activities on June 18. He cited voluntary compliance as a major goal of the Commission and went on to describe assistance provided to candidates and committees by the Public Information Office in order to meet this goal. Stressing that advisory opinions also foster voluntary compliance, Mr. Friedersdorf explained that, by requesting an opinion, a person can obtain the protection of a binding legal opinion before undertaking an activity. He also noted that clearly written regulations contribute to voluntary compliance, and he went on to review the Commission's progress in that area. In the process of drafting regulations, the Commission has consulted with other Federal agencies to avoid conflicts with their regulatory requirements.

Finally, Mr. Friedersdorf detailed the Commission's enforcement procedures, mentioning that the 1979 Amendments increased the time required to process a complaint. He pointed out that when the Commission is unable to resolve a violation through a conciliation agreement, the election law authorizes the Commission to file suit in a district court. Mr. Friedersdorf stated: "In the overwhelming majority of cases, the

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<sup>1</sup>See also Appendix 6 for testimony related to Clearinghouse activity.

<sup>2</sup>The 1979 *Annual Report* summarizes the Andersen recommendations on pages 6 and 16.

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<sup>3</sup>See also page 12.

court has agreed with the Commission's legal and factual findings and has granted some form of injunctive or other relief."

As candidates and committees become more familiar with the law, Mr. Friedersdorf said that the Commission expects an increasing level of voluntary compliance. On the other hand, a higher level of sophistication also means that a larger proportion of complaints will involve more complex factual situations and legal issues, requiring a greater commitment of Commission resources.

#### **Testimony Before the Task Force on Information and Public Disclosure**

On June 30, Chairman Friedersdorf addressed the particular topics on public information and disclosure selected by the task force. The following paragraphs briefly summarize Mr. Friedersdorf's remarks on major issues.

*Regional Centers.* The Chairman described various plans for establishing regional centers that would provide, to the public, campaign finance data in the form of microfilm prints, computer index listings, computer tapes and software programs. Mr. Friedersdorf also estimated the costs of each plan.

*Computerized Reporting of Campaign Finance Activity.* In describing four ways in which computers might be used by political committees to report their campaign finances, Mr. Friedersdorf reviewed Commission action taken to implement or investigate the options. He also evaluated them according to their feasibility and remarked on certain problems inherent in each program.

*Assignment of Attorney to the Information Office.* Commissioner Friedersdorf stated that the addition of an attorney to the Information Office would not be appropriate. He explained that it is not within the Office's scope to render legal advice to candidates and committees. Information staff provide requesters with as much information as possible to allow callers to make

their own determinations as to the legality of their particular situations. In areas where there has been no interpretation of the law and no other information is available, the Information staff suggests the caller request an advisory opinion from the Commission. Mr. Friedersdorf added that the Information Office works very closely with the General Counsel's Office.

*Press Office Dissemination of Positive Information on the Commission.* Mr. Friedersdorf said that, because of budget constraints, the Press Office is restricted to responding to media inquiries and to correcting misinformation. The three-person staff, "stretched to the limit," cannot initiate new information outreach programs. As an example, the Commissioner mentioned that, in 1979, the Office developed a computerized mailing list to reach media representatives in every State. However, because of lack of staff and resources, the list has never been used; Press Office mailings are sent only to the Washington press corps.

# Appendix 8 Primary Matching Fund Certifications and Audits

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## Primary Matching Fund Certification Activity\*

Name of Candidate	No. of Submis- sions	Amount Requested	No. of Contribu- tions	No. of Resub- missions	Amount Certified by Commission To Date	Maximum Entitle- ment Remaining**
ANDERSON, John	7	\$2,895,484	80,744	0	\$2,680,347	0
BAKER, Howard	14	2,699,562	67,490	0	2,635,043	0
BROWN, Edmund	15	996,153	16,273	3	892,249	0
BUSH, George	12	6,373,497	86,612	0	5,716,247	0
CARTER, Jimmy	28	5,490,096	63,423	3	5,117,854	\$589,089
CRANE, Philip	17	2,140,551	69,695	1	1,898,838	0
DOLE, Robert	5	467,117	3,752	1	446,226	0
KENNEDY, Edward	29	4,447,034	81,678	4	4,130,452	\$882,824
LAROCHE, Lyndon	15	592,982	10,663	13	526,253	0
REAGAN, Ronald	10	8,254,771	213,747	0	7,294,462	0
<b>TOTALS</b>	<b>152</b>	<b>\$34,357,247</b>	<b>694,077</b>	<b>25</b>	<b>\$31,337,971</b>	

\* As of April 15, 1981.

\*\*Maximum Entitlement Remaining is based upon candidate's statement of net outstanding campaign obligations.

## Post-Primary Audit Reports Released to the Public\*

Audit Report	Date Made Public
Philip Crane, Crane for President Committee . . . . .	November 14, 1980
Edmund Brown, Brown for President Committee . . . . .	December 16, 1980
Robert Dole, Dole for President Committee, Inc.** . . . . .	December 16, 1980
John Anderson, Anderson for President Committee . . . . .	December 18, 1980
Howard Baker, Baker Committee . . . . .	December 18, 1980
Jimmy Carter, Carter/Mondale Presidential Committee, Inc . . . . .	January 21, 1981
Ronald Reagan, Reagan for President . . . . .	February 2, 1981
George Bush, George Bush for President . . . . .	February 4, 1981
Lyndon LaRouche, Citizens for LaRouche . . . . .	April 15, 1981

\* As of April 15, 1981.

\*\*On March 10, 1981, the Commission released an addendum to the final audit report on the Dole Committee .

Type of Presidential Candidate	Spending Limit <sup>1</sup>	Exempt Fundraising Spending Limit <sup>2</sup>
<b>PRIMARY ELECTION</b>		
Primary Candidates	a. National Limit: <sup>4</sup> \$10,000,000 + COLA  b. State Limit: The greater of \$200,000 + COLA or \$.16 x State VAP <sup>7</sup> + COLA	20 Percent of the National Limit <sup>5</sup>
Primary Candidates Not Accepting Public Funds	No Limit	Not Applicable
<b>GENERAL ELECTION</b>		
Major Party Candidates <sup>8</sup>	a. National Limit: <sup>9</sup> \$20,000,000 + COLA  b. State Limit: None	Not Applicable <sup>10</sup>
Minor Party <sup>12</sup> or New Party <sup>13</sup> Candidates	a. National Limit: <sup>9</sup> \$20,000,000 + COLA  b. State Limit: None	20 Percent of the following: the National Limit minus the amount of Public Funding Received
Candidates Not Accepting Public Funds	No Limit	Not Applicable

<sup>1</sup> Spending limits are increased by the cost-of-living adjustment (COLA), which the Department of Labor calculates annually using 1974 as the base year. The COLA for 1979 was 47.2 percent. Spending limits for 1980 included this increase.

<sup>2</sup> Any fundraising expenditures exceeding the fundraising spending limit count against the overall spending limit.

<sup>3</sup> A National party committee may make special limited expenditures, called coordinated party expenditures or 441a(d) expenditures, on behalf of its Presidential nominee. Coordinated party expenditures are not considered contributions and do not count against a candidate's expenditure limit. 11 CFR 110.7(a).

<sup>4</sup> This equaled \$14,720,000 in 1980.

<sup>5</sup> This equaled \$2,944,000 in 1980.

<sup>6</sup> This equaled \$7,360,000 in 1980.

<sup>7</sup> VAP is the Voting Age Population, which the Department of Commerce calculates annually.

<sup>8</sup> A major party candidate is the nominee of a party whose candidate received 25 percent of more of the total popular votes in the preceding Presidential election. 11 CFR 9002.6.

# Appendix 9 Expenditure Limits for Publicly Funded Candidates

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Maximum Amount of Public Funds Candidate May Receive	National Party Spending <sup>3</sup> Limit for Candidate	Limits on Spending from Personal Funds
50 Percent of the National Limit <sup>6</sup>	Not Applicable	\$50,000
Not Applicable	Not Applicable	No Limit
\$20,000,000 + COLA <sup>9</sup>	2 cents x VAP of U.S. + COLA <sup>11</sup>	\$50,000
Ratio of: <sup>14</sup> $\frac{\text{Public Funds}}{\$20,000,000 + \text{COLA}} = \frac{\text{candidate's popular vote}}{\text{average popular vote of major party candidates}}$	2 cents x VAP of U.S. + COLA <sup>11</sup>	\$50,000
Not Applicable	2 cents x VAP of U.S. + COLA <sup>11</sup>	No Limit

<sup>9</sup> This equaled \$29,440,000 in 1980.

<sup>10</sup> When Federal funds are insufficient to cover a major party candidate's full entitlement, the candidate may raise private funds and the exempt fundraising limit becomes applicable. See 11 CFR 100.8(b)(21)(i) and 9003.3(b)(4).

<sup>11</sup> The national party spending limit is based on the voting age population (VAP) and the cost-of-living adjustment (COLA) of the preceding year. Since the 1979 national VAP was 157,529,000 and the 1979 COLA was 47.2 percent, the national party spending limit equaled \$4,637,653.76 in 1980.

<sup>12</sup> A minor party candidate is the nominee of a party whose candidate received between 5 percent and 25 percent of the total popular votes in the preceding Presidential election. 11 CFR 9002.7.

<sup>13</sup> A new party candidate is the nominee of any party that is neither a major party nor a minor party. 11 CFR 9002.8.

<sup>14</sup> A minor or new party candidate is eligible to receive a proportionate amount of the public funding available to major party candidates (\$29,440,000 in 1980). Payments are based on the ratio of the minor party's or new party's popular vote in the past or current Presidential election to the average number of popular votes received by the major party candidates. 11 CFR 9004.2 and 9004.3



In 1979, as part of its preparation for the 1980 elections, the Commission prescribed regulations governing the public financing of Presidential primary elections and national nominating conventions. In addition, the Commission sent to Congress proposed regulations on the financing and sponsorship of candidate debates. The debate regulations were prescribed in April 1980.<sup>1</sup>

The Commission's program of revising the public financing regulations continued in 1980. In July, the Commission prescribed two revisions in the regulations governing suspension of primary matching funds. The Commission also revised regulations on the public financing of the Presidential general election, which were prescribed in September. Moreover, new regulations on contributions and expenditures by delegates to the national nominating conventions were prescribed in August 1980. Major provisions of these new and revised regulations are summarized below.<sup>2</sup>

### Suspension of Primary Matching Funds

One revised provision of the regulations implementing the Presidential Primary Matching Payment Account Act permits the Commission to suspend matching fund payments if a candidate knowingly, willfully and **substantially** exceeds the spending limit prescribed by law for a particular State. Under previous regulations, the Commission could suspend payment if a candidate knowingly and willfully exceeded the spending limit. Under a second revised provision, a candidate who exceeds the spending limit will **not** be permitted to reestablish eligibility. Formerly, the Commission would resume payments if the candidate repaid an amount

equal to the excessive expenditure and additionally paid a civil or criminal penalty resulting from the violation.

### Public Financing of Presidential General Elections

#### Candidate Eligibility

Major party candidates must sign and submit a letter of agreement and written certifications<sup>3</sup> to the Commission within 14 days after receiving their party's Presidential nomination. Minor and new party candidates must submit a letter of agreement and written certifications within 14 days after qualifying for the ballot in 10 States. Minor and new party candidates may, however, request an extension of this deadline.

#### Candidate's Withdrawal from Campaign

When an individual ceases to be a Presidential candidate,<sup>4</sup> he/she must submit a written statement to the Commission within 60 days indicating: campaign debts, cash-on-hand, estimated winding-down costs, the value of any capital assets, and debts owed to the campaign.

#### Personal Funds

A candidate may spend personal funds of up to \$50,000 for any qualified campaign expenses. In addition to the candidate's personal assets and salary, "personal funds" may include funds of the immediate family over which the candidate had legal title or to which, under State law, the candidate had the right of beneficial enjoyment at the time he/she became a candidate. When a family member contributes funds which the candidate does not control, the funds

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<sup>1</sup> For detailed summaries of Commission regulations proposed or prescribed in 1979, see pages 9-12 of the 1979 *Annual Report*.

<sup>2</sup> See page 58 of Appendix 5 for a chart on regulations prescribed in 1980. For a discussion of revised regulations implementing the 1979 Amendments to the election law, see page 25.

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<sup>3</sup> In the letter of agreement, the candidate must agree to furnish records of campaign expenses, permit the conduct of an audit, identify the person authorized to receive payments on his/her behalf and designate a campaign depository. In the written certifications, the candidate must certify that he or she will comply with the Act's limits on expenditures, contributions and the use of personal funds.

<sup>4</sup> Any individual who is not actively conducting a campaign in more than one State for the Presidency and Vice Presidency ceases to be a candidate.

are considered contributions subject to the \$1,000 limit. They do not count against the \$50,000 limit on personal funds.

### **Legal and Accounting Fund**

*Contributions to a Legal and Accounting Compliance Fund.* Federally funded candidates may accept private contributions for a legal and accounting compliance fund. Contributions to the fund, which are subject to the Act's \$1,000 per election limit and to the prohibitions on contributions, must be kept in an account separate from Federal funds. Federal funds may not be used to solicit contributions to this account. Further, solicitations to the compliance fund must clearly indicate that contributions will be used for compliance purposes.

Funds may be transferred from the candidate's primary campaign to the compliance fund, provided the candidate has sufficient funds to make any required repayments of primary matching funds. Contributions designated for the primary campaign, but which are made after the beginning of the general election expenditure report period, may also be deposited in the compliance fund provided the candidate committee complies with certain requirements specified in the regulations.

*Disbursements from the Compliance Fund.* Disbursements from the compliance fund (other than funds loaned to the candidate's campaign for start-up expenses) are not chargeable to the candidate's spending limit, but they are reportable. These funds may be used to comply with the Act; pay civil penalties resulting from violations of the Act;<sup>5</sup> make repayments of public funds to the U.S. Treasury, if required; pay up to 10 percent of all overhead costs allocable to the campaign's other legal and accounting compliance costs; and solicit contributions to the compliance fund. The compliance fund may **not** be used to pay debts remaining

from the candidate's primary campaign, unless excess funds remain after all debts of the general election campaign are liquidated.

### **Start-Up Expenses**

Candidates are permitted to make disbursements to set up a basic campaign organization before the expenditure report period begins or before they receive public funds. Such disbursements count as qualified campaign expenses and thus must ultimately be defrayed with public funds. In the interim before public funds are available, however, the candidate may fund such disbursements from other sources. Subject to the restrictions detailed in the regulations, the candidate may borrow from the compliance fund, from banks in the ordinary course of business, from the primary campaign or from personal funds.

### **Winding Down Costs**

Payments made to terminate campaign activity after the close of the expenditure report period are considered qualified campaign expenses. For example, rental of office space required for "winding down" activities of the campaign is a qualified campaign expense. Thus, candidates must use Federal funds to defray this expense.

### **Documentation of Expenses**

The candidate has the burden of proving that all disbursements made by the candidate, or any authorized committee or agent of the candidate, are qualified campaign expenses. Minimum documentation required for qualified campaign expenses includes:

*For disbursements of \$200 or less,* a canceled check to the payee (unless the disbursement is from a petty cash fund); and

*For any single disbursement exceeding \$200,* a receipted bill from the payee or a canceled check plus a bill, invoice, voucher or memorandum from either the candidate or the committee.

### **Audits**

It is the candidate's responsibility to facilitate

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<sup>5</sup> Civil or criminal penalties resulting from violations of the Act may not be paid from Federal funds.

a Commission audit by gathering records in a central location and providing the necessary space and personnel to perform the audit. All bank records and supporting documentation for expenditures of public funds must be provided by the candidate.

### Reporting Requirements

*General Election vs. Other Elections.* The candidate's authorized campaign committee(s) must file separate reports for the general election campaign and for other elections.

*Campaign Funds vs. Compliance Funds.* With regard to the general election, the campaign must file two separate reports: one disclosing receipts and disbursements for qualified campaign expenses, the other disclosing activity of the legal and accounting compliance fund.

*Disputes Procedure for Certification and Repayment.* For those instances when a candidate challenges a Commission determination concerning certifications and repayments of public funds, a procedure has been standardized to conform with due process requirements. The candidate has an opportunity to respond to a Commission decision within a specified time, engage counsel if he/she so desires and submit written evidence in support of his/her position. The Commission is required to consider the evidence submitted and provide a statement of reasons underlying its final determination, including a summary of any investigation conducted.

## Delegate Regulations

### Contributions to Delegates<sup>6</sup>

*Contributions from Persons.* Since a delegate does not seek nomination or election to Federal office, he or she is **not** a "candidate" under the Federal Election Campaign Act (the Act).

Therefore, the reporting requirements and contribution limits (per candidate) of the Act do **not** apply to contributions made to promote an individual's selection as a delegate to a national nominating convention. However, since the contributions to a delegate are made for the purpose of influencing a Federal election (i.e., a national nominating convention or a primary election or caucus held to select delegates to a national convention), they do count against the individual contributor's aggregate contribution limit of \$25,000 per calendar year. Moreover, contributions may not be made from sources prohibited by the Act (e.g., corporations or labor organizations).

*Contributions from Presidential Campaign Committees.* Contributions to a delegate by the campaign committee of a Presidential candidate who has received matching funds are chargeable to the Presidential candidate's spending limits.

### Expenditures by Delegates

*Expenditures to Promote Selection Only.* Expenditures by a delegate to promote **only** the individual's selection as a delegate are not limited or reportable. Nor would they be chargeable to a Presidential candidate's spending limits. Moreover, the regulations permit individuals to make these expenditures from their personal funds.

**Example:** An individual could spend any amount during the delegate selection process for communications advocating his/her selection or for travel and living expenses, including travel to the national nominating convention. These payments would not be reportable.

*Expenditures for Campaign Materials.* Expenditures made by a delegate for certain campaign materials (e.g., pins, bumper stickers, handbills, brochures or yard signs) that advocate his or her selection and also refer to a Presidential candidate are not limited or reportable, as long as they are used only in connection with volunteer activities. These expenditures would not be considered contributions to the Presidential

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<sup>6</sup> The term "delegate" includes both delegates and individuals seeking selection as delegates to national nominating conventions.

candidate or expenditures chargeable to the Presidential candidate's spending limits.

*Expenditures for Public Media.* Payments made by a delegate for political advertisements directed to the general public (e.g., communications in broadcast media, newspapers, magazines or direct mail) which advocate the individual's selection as a delegate and refer to a Presidential candidate are not limited or reportable unless they qualify as either a contribution in-kind to, or an independent expenditure on behalf of, the Presidential campaign.

#### **Delegate Committees**

If several persons, acting as a group, support the selection of delegate(s) by receiving contributions or making expenditures which exceed \$1,000 a year, the group becomes a political committee. This delegate committee is subject to the standard registration and reporting requirements, contribution limits and prohibitions of the Act.

#### **Party Committees**

*Administrative expenses* incurred by local, county, district or State party committees for sponsoring conventions or caucuses to select delegates are **not** reportable, but may not be paid with contributions which are prohibited under the Act.

*Ballot fees paid to State or district party committees* by individuals to qualify as delegate candidates are not contributions or expenditures under the Act. These payments are not subject to any spending limits and are not reportable.

# Appendix 11

## FEC Advisory Opinions: Summaries

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The following summaries of Advisory Opinions (AOs) include those issued between January 1 and December 31, 1980. Those seeking guidance for their own activity should consult the full text of an advisory opinion and not rely on the synopsis given here. Copies of the full text of AOs are available from the Public Records Office at the Commission. (Telephone: 202/523-4181 or toll free, 800/424-9530)

### **AO 1979-58: Volunteer Services Provided by Senior Partner of Law Firm**

The senior partner of a law firm may engage in volunteer fundraising and political activities for the Carter/Mondale Presidential Committee, Inc. (the Committee) without such activities counting as in-kind contributions from the firm to the Committee. 2 U.S.C. §431(8)(A).

Although the senior partner would be providing services to the Committee during the law firm's normal business hours, his income from the firm would not be considered compensation for such services because: 1) the partner's income is not based on time devoted to firm business but rather on "his proprietary or ownership interest in the firm"; and 2) the partner has complete discretion in the use of his time, and no reduction of income to the firm would occur if, for whatever reason, he spent fewer hours at the firm. Commissioner Frank P. Reiche filed a dissenting opinion. (Date Issued: March 5, 1980; Length, including dissent: 6 pages)

### **AO 1979-62: Solicitations by Trade Association PAC**

The Tooling and Machining PAC, the separate segregated fund of the National Tool, Die and Precision Machining Association (NTDPMA), a trade association, may not solicit the executive or administrative personnel of corporations which are members of the Chicago Tool and Die Institute (CTDI) but are not members of NTDPMA. Although CTDI and NTDPMA have similar goals, interests and membership requirements, not all the member corporations of CTDI are members of NTDPMA. The Tooling and Machining PAC would, therefore, be specifically

precluded from soliciting those corporations that are not members of NTDPMA. (Date Issued: February 14, 1980; Length: 3 pages)

### **AO 1979-66: Notice in Trade Association's Publications**

The Associated General Contractors of America (the Association), a trade association, may publish in two of the Association's publications a notice regarding the financial activity of its separate segregated fund, AGC-PAC. One of the publications is circulated to nonmembers as well as members; the other is circulated to members only. Since the notice does not encourage readers to support AGC-PAC activities or provide information on how they may contribute to AGC-PAC, the notice does not constitute a "solicitation" under the Act. (The Act specifically restricts "solicitations" by a separate segregated fund to the membership of its sponsoring association. 2 U.S.C. §437f.) Chairman Robert O. Tiernan and Commissioner Thomas E. Harris filed a dissenting opinion. (Date Issued: January 30, 1980; Length, including dissent: 3 pages)

### **AO 1979-67: Teacher Intern Program**

Scholarships awarded for services provided to the Republican National Committee (RNC), to the Democratic National Committee (DNC) or to any Senate or Congressional staff by graduate students participating in an intern program sponsored by the George Peabody College for Teachers of Vanderbilt University would not be considered in-kind contributions under the Act. Since the basic purpose of the intern program is educational and if the interns do not devote substantial time to federal election campaign purposes, the compensated interns' services would not constitute in-kind contributions. The Peabody Center, as sponsor of the program, would not be considered a political committee under the Act. 2 U.S.C. §§431(8) and (9). To the extent that the interns' activities are not related to campaigns for federal office, funds contributed to or spent by the Peabody Center to defray the cost of the program would not be

subject to the Act's limits or prohibitions on contributions. Commissioners Joan D. Aikens, Max L. Friedersdorf and John W. McGarry filed a concurring opinion. (Date Issued: February 11, 1980; Length, including concurring opinion, 7 pages)

**AO 1979-68: Solicitations by Membership Organization's Separate Segregated Fund**

The Illinois Medical Political Action Committee (IMPAC), a separate segregated fund established by the Illinois State Medical Society (ISMS), may solicit contributions in conjunction with an annual dues statement for ISMS and the American Medical Association (AMA), the national association with which ISMS is affiliated. IMPAC may also make unlimited transfers of funds to the AMA's separate segregated fund, the American Medical Political Action Committee (AMPAC), since IMPAC is affiliated with AMPAC. (Date Issued: January 11, 1980; Length: 2 pages)

**AO 1979-69: Trade Association's Solicitation of Associate Members**

The Alaska Loggers' Association/Clarence Kramer Political Action Committee (ALA/PAC), the separate segregated fund of the Alaska Loggers' Association, Inc. (ALA), may not solicit "associate members" of ALA.

While the Act and Commission Regulations permit a trade association, or its separate segregated fund, to solicit contributions to the fund from its **members**, ALA's associate members do not meet the criteria for membership. 11 CFR 114.1(e). Specifically, an incorporated membership organization without capital stock may only solicit "members" or those persons who have interests and rights in the organization, who assume some right to participate in the organization's direction, and who have an obligation to help sustain the organization through regular financial contributions. Since ALA's bylaws specifically state that its associate members do "not have the right to vote at any meeting or have any voice in ALA or any

control over its officers," the associate members are not, therefore, "members" of ALA as defined by 11 CFR 114.1(e). (Date Issued: May 13, 1980; Length: 3 pages)

**AO 1979-70: General Public Communication by Separate Segregated Fund**

The LTV Corporation Active Citizenship Campaign (LTV/ACC), a separate segregated fund of the LTV Corporation, may pay the costs of publications for the general public which contain statements by several Presidential candidates on campaign issues selected by LTV/ACC.

Since the proposed communication would, in effect, be a means of advertising each candidate's views, the costs of publishing the communication would constitute an in-kind contribution to each of the candidates. 2 U.S.C. §431(8)(A)(i). The amount of the contribution to each candidate would be equal to the cost of publishing the communication divided by the number of responses printed. 11 CFR 106.1(a).

Since the costs of publishing the information would count as in-kind contributions, the LTV Corporation may not reimburse LTV/ACC for the publication costs; nor may the LTV Corporation pay the costs itself. The Corporation's payment of these costs would violate the Act's ban on corporate contributions and expenditures in connection with federal elections. (Date Issued: January 11, 1980; Length: 4 pages)

**AO 1979-72: Trade Association's Reimbursement of Separate Segregated Fund**

The National Association of Home Builders (NAHB) may reimburse its separate segregated fund, the Build Political Action Committee (Build-PAC), for solicitation costs that Build-PAC had unnecessarily and mistakenly paid for in connection with a fundraiser for Build-PAC.

As required by Commission Regulations (11 CFR 114.5 (b)(2)), Build-PAC had previously reimbursed NAHB for fundraising costs which

exceeded one-third of the gross revenues of the fundraiser. However, in calculating total costs, Build-PAC had mistakenly included costs for soliciting contributions. Since the Act permits a membership corporation to pay these solicitation costs for its separate segregated fund (2 U.S.C. §441(b)(4)(C)), Build-PAC did not have to include these costs in determining the required payment for costs of entertainment and prizes awarded at the event. As a result of this erroneous calculation, BuildPAC had actually overpaid NAHB. NAHB may, therefore, repay Build-PAC the overpayment (\$18,906.54) resulting from the error. Commissioner Thomas E. Harris filed a dissenting opinion. Commissioner Frank P. Reiche filed a concurring opinion. (Date Issued: February 1, 1980; Length, including concurring opinion and dissent, 6 pages)

**AO 1979-73: Allocation of Advance Staff Salary and Per Diem in Presidential Campaign**

For purposes of complying with national and state-by-state expenditure limits, applicable to the primary election, the Kennedy for President Committee (the Committee) should allocate advance staff salary and per diem costs to the state with respect to which the staff engages in campaign activity. According to Commission Regulations, expenditures "for staff, media, printing, and other goods and services used in a specific State should be attributed to that State." 11 CFR 106.2(b). Therefore, the Committee should allocate expenditures for advance staff salaries to each state limit in proportion to the time that the advance person, working either out of national headquarters or in the field, spends in connection with the campaign in that state. The Committee should allocate per diem costs to the state where the advance person uses the per diem. Expenses for interstate travel, however, and for per diem used during such travel need not be attributed to any individual state limit. All expenditures attributed to any state must also be attributed to the overall national expenditure limit. (Date Issued: January 11, 1980; Length: 2 pages)

**AO 1979-74: Payment of Compensation to Candidate**

William Emerson, a candidate for the U.S. House of Representatives, may receive compensation for his legislative lobbying and consulting business without such compensation constituting contributions or expenditures, provided the compensation:

1. Results from bona fide employment, genuinely independent of his candidacy;
2. Is exclusively in consideration of his services; and
3. Does not exceed what a similarly qualified person would receive for the same work, over the same period of time. (Date Issued: January 11, 1980; Length 2 pages)

**AO 1979-75: Combined Fundraising by Trade Association PAC and Its State and Local Affiliates**

The Associated Builders and Contractors Political Action Committee (ABC-PAC), established by the Associated Builders and Contractors, Inc. (ABC), a trade association, may follow the procedures it proposed to the Commission for accepting and allocating contributions received through a combined federal/state fundraising effort.

State and local ABC chapters (affiliated with ABC) have established political action committees (Chapter PAC's) to support exclusively candidates for state and local office. Under the proposed procedures, a written agreement will provide that funds jointly collected by the Chapter PACs and the ABC-PAC will be divided on a 2/3-1/3 basis and that no part of the contributions received by a Chapter PAC will be used to support a federal election. All solicitation materials will inform contributors that 1/3 of their contribution will be allocated to federal elections and, thus, be charged against applicable contribution limits of the Act.

The jointly collected funds will be deposited in a special escrow account. The bank will divide the contributions according to the agreed ratio and

transfer to the Chapter PAC and ABC-PAC accounts the portion due to each. ABC-PAC's Statement of Organization will identify all such special accounts as campaign depositories.

ABC-PAC will officially "receive" each contribution on the day the designated ABC-PAC state representative actually receives the funds, rather than when the funds are transferred into ABC-PAC's account. The representative will deposit all contributions into the escrow account within 10 days of receipt, and will furnish ABC-PAC headquarters with the information on contributors and contributions necessary for record-keeping and reporting requirements. (Date Issued: January 18, 1980; Length: 4 pages)

#### **AO 1979-76: Sale of Books to Corporations as Contributions**

The RSC Campaign Fund (the Committee), a political committee, may not sell to corporations books that it published for fundraising purposes. The gross proceeds of the sale are considered contributions, whether the books are sold above, below or at cost, and the Act and Commission Regulations prohibit a corporation from making a contribution to a political committee.

The Commission distinguished this opinion from two previous opinions (AO 1979-24 and AO 1978-18) wherein the sale of excess campaign assets and contributor lists did not constitute contributions because, unlike the books published by the Committee, the items were not specifically acquired or developed for general fundraising purposes. (Date Issued: January 22, 1980; Length: 3 pages)

#### **AO 1979-77: Activities of Affiliated Committees**

Since the Trammell Crow Partners (the Crow Partnership) owns controlling stock in the Trammell Crow Company (the Crow Company), and since the partners of the Crow Partnership are also executive officers of the Crow Company, the two organizations are considered affiliated for purposes of the Act; thus, their

respective political committees are affiliated committees. Accordingly, the Trammell Crow Partners Political Committee (the Partners Committee) and the Trammell Crow Company PAC (the Crow Company PAC) must make and receive contributions as though they are a single committee with a single contribution limit. Each committee, however, must file reports separately and identify the other as an affiliated committee on its Statement of Organization.

The Crow Company PAC, a separate segregated fund, may solicit contributions from the individual partners of the Crow Partnership since they own all the stock of the Crow Company, a corporation, and the Crow Company PAC is affiliated with the Partners Committee.

On the other hand, since the Partners Committee is not a separate segregated fund of a corporation, it may solicit contributions from any individual who may otherwise make lawful contributions under the Act.

The Crow Company may provide the Partners Committee with corporate employees to render legal and accounting services solely to ensure compliance with the Act. The compensated services are not considered contributions but must be reported by the Committee in accordance with Commission reporting regulations. (Date Issued: January 29, 1980; Length: 4 pages)

#### **AO 1979-78: Definition of Honorarium**

The fee paid to Senator Daniel P. Moynihan for serialization of his book in *The New Yorker*, prior to the book's publication, does not constitute an honorarium, but rather a book royalty.

Payment for an article is specifically included in the definition of honorarium in 2 U.S.C. § 441i. "Article" is defined in Commission regulations to include "a writing other than a book, which has been or is intended to be published." 11 CFR 110.12(b)(4). However, since Senator Moynihan's publisher negotiated the serializa-



tion fee, received the fee from the magazine and paid the Senator his percentage of the fee, the fee represents a royalty for Senator Moynihan's book rather than a payment for an "article." (Date Issued: January 11, 1980; Length: 2 pages)

**AO 1979-80: Independent Expenditures  
Program of a Multicandidate  
Political Committee**

Use of consultants or vendors by the National Conservative Political Action Committee (NCPAC), a multicandidate political committee, to make independent expenditures may result in an in-kind contribution to a candidate for federal office under certain circumstances.

Before undertaking an independent expenditure program advocating the defeat of certain candidates for federal office, NCPAC sought guidance from the Commission in determining whether NCPAC would be prohibited from engaging a particular consultant or vendor, in connection with making independent expenditures advocating the defeat of a clearly identified candidate, if that consultant or vendor had also been separately engaged by an opponent of that candidate or by a potential opponent of that candidate.

The Act and Commission regulations state the conditions which must be met in order for an expenditure to be independent. Specifically, "independent expenditure means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not *made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.*" (Italics added.)

The questions posed by NCPAC suggested that NCPAC was concerned with the last element (italicized) in the definition of an independent expenditure. Commission regulations specifically define this element of an independent expenditure as an expenditure which is **not** arranged,

coordinated or directed "by the candidate or his/her agent prior to the publication, distribution, display or broadcast of the communication." 11 CFR 109.1(b)(4). Further, the regulations state that such cooperation or coordination in making the expenditure would be presumed to exist if:

1. The expenditure is "based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate," or
2. The expenditure is "made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent." 11 CFR 109.1(b)(4)(i).

Therefore, if NCPAC engages the services of a vendor or consultant to make independent expenditures advocating the defeat of a certain candidate, the presumption is that the expenditures would **not** be independent and would result in an in-kind contribution to the candidate's opponent if:

1. An agency relationship exists or existed between the candidate's opponent and a vendor or consultant engaged by NCPAC; or
2. The expenditure is based on information provided by the opponent or the opponent's agent; or
3. The expenditure is made by or through any person connected with the opponent's campaign, as specified by 11 CFR 109.1(b)(4)(i)(B). (See above.)

The Commission then applied these three criteria for an independent expenditure program to nine specific situations presented by NCPAC. (Date Issued: March 12, 1980; Length: 10 pages)

**AO 1979-81: Free Use of Community  
Facility for Fundraising Event**

Free use of the Kansas City Armory for a fundraising event by the Winn for Congress

Committee (the Winn Committee) would not constitute an in-kind contribution to the Winn Committee by the State of Kansas (owners of the Armory), by the Citizen's Military Committee (managers of the Armory) or by the Wyandotte County Republican Committee (the group that transferred to the Winn Committee their right to use the Armory free of charge once a year) provided the conditions below are met.

Under the Act as amended in 1979, the term "contribution" excludes, under certain circumstances, "the use of real or personal property, including a church or community room." 2 U.S.C. §431(8)(b)(ii). In this case, the use of the Armory free of charge would not be considered an in-kind contribution to the Winn Committee as long as the Armory:

- is commonly offered and used on a regular basis by members of the Kansas City community for noncommercial and community purposes; and
- is available for use without regard to political affiliation.

There would be no reporting requirement if the use is not a contribution under these conditions. (Date Issued: February 13, 1980; Length: 2 pages)

#### **AO 1979-82: Use of Excess Campaign Funds**

Congressman Ronald M. Mottl (D-Ohio) may transfer excess campaign funds to his son's campaign for state office as long as the transfer of funds is lawful under Ohio law. Under the 1979 Amendments to the Act, candidates who were not members of Congress on the day the 1979 Amendments were enacted into law (January 8, 1980) may not use excess campaign funds for personal use. Since, however, Congressman Mottl was a Member of the U.S. House on that date, the question does not arise as to whether a transfer to his son's state campaign would be considered using the funds for "personal use." 2 U.S.C. §439a.

Further, the Act does not limit the amount of funds which may be transferred by Congressman Mottl's principal campaign committee to candidates for state or local office. 2 U.S.C. §441a. (Date Issued: February 8, 1980; Length: 2 pages)

#### **AO 1980-1: Solicitation of Insurance Agents by Corporation PAC**

The Farmer's Mutual Hail Political Action Committee (FMH-PAC), the separate segregated fund of the Farmers Mutual Hail Insurance of Iowa (the Company), may not solicit contributions from the commissioned insurance agents who represent the Company.

The commissioned agents may not be considered "executive or administrative personnel" because the Company does **not** withhold income tax from the agents' salaries. 11 CFR 114.1(c). Since corporations may solicit only their executive and administrative personnel and stockholders, FMH-PAC may not solicit these agents for contributions. (Date Issued: February 15, 1980; Length: 2 pages)

#### **AO 1980-3: Qualifying as the National Committee of a Political Party**

Documentation provided to the Commission demonstrates that the Executive Committee of the Citizens Party is engaged in sufficient party-building activity on the national level to qualify as the "national committee" of the Citizens Party, once the Citizens Party qualifies as a "political party" under the Act and Commission Regulations. To qualify as a political party, the Citizens Party must obtain verification from a state election official that a federal candidate's name will appear on that state's election ballot as a Citizens Party candidate. 2 U.S.C. §431(16). At that time, assuming the Executive Committee continues its party-building activities, it would qualify as the national committee of a political party.

Determination of national committee status would permit the Citizens Party to accept contributions subject to the annual limit

(\$20,000 or \$15,000) of 2 U.S.C. § 441a(a) and to make limited national party expenditures as provided by 2 U.S.C. § 441a(d). The Commission did not express an opinion, however, on the applicability of public funding provisions of the Act to possible activities by the Citizens Party and its potential Presidential candidate since the Executive Committee did not present any specific transaction or activity related to these provisions of the Act. (Date Issued: March 4, 1980; Length: 3 pages)

**AO 1980-4: Legal Services Donated to Presidential Committee for Defense in Civil Suit**

Compensation paid by several law firms to their staffs for legal services rendered without charge to the Carter/Mondale Presidential Committee (the Committee) to defend the Committee in a civil lawsuit would not be considered contributions under the Act. (The complaint alleges that the Committee improperly allocated costs between political and official travel and did not properly reimburse the government for such travel, in violation of the Hatch Act, the Appropriations Act and the plaintiff's constitutional rights.) The firms' compensation enables the Committee to present a defense to a civil complaint rather than enabling the firms' staffs to participate in the Committee's political activities. Therefore, since the donated legal services are not rendered for the purpose of influencing a federal election, they are not contributions. (Date Issued: February 1, 1980; Length: 3 pages)

**AO 1980-5: Delegate Selection**

Payments made by individuals to the Louisiana Democratic State Central Committee (the State Committee) for the purpose of qualifying as delegates to the 1980 Democratic National Presidential Nominating Convention are not considered contributions or expenditures because such individuals are not candidates for federal office under the Act. 2 U.S.C. § 431(3). Accordingly, the qualifying fee paid to the party

would **not** have to be reported; nor would a contribution limit be imposed on the fee. The fee may not, however, be paid from contributions prohibited under the Act. 2 U.S.C. § 441b and 441e.

The Act and Commission regulations would, however, apply to certain expenses relating to the delegate's campaign, as follows:

*Expenditures Made by Delegate for His/Her Selection Only.* Expenditures made from contributions received by the delegate candidate from individuals, or from the delegate's personal funds, and used to advocate **only** the delegate's selection, would not be subject to the Act's expenditure limits; nor would they be reportable. However, contributions from individuals would be chargeable to the contributor's \$25,000 annual contribution limit. 2 U.S.C. § 441a(a)(3). In addition, the delegate may not accept contributions from sources prohibited under the Act. 2 U.S.C. §§ 441b and 441e.

*Expenditures by Delegate for Campaign Materials.* Expenditures made by delegate candidates for campaign materials (e.g., bumper stickers, pins, handbills, posters, yard signs and brochures) which are used in connection with volunteer activity and which advocate his/her selection, but also refer to a Presidential candidate, are neither limited nor reportable. 2 U.S.C. § 431(8)(B)(xi).

*Expenditures by Delegate for Public Media.* Expenditures by delegates for public media (e.g., broadcast facilities, newspapers, magazines, billboards, direct mail or similar types of general public communications or public advertising) which both advocate the delegate's selection and refer to a Presidential candidate would count either as:

1. **An independent expenditure** if the expenditure expressly advocated the election of a clearly identified Presidential candidate and was **not** made in consultation or cooperation with the Presidential candidate or any of his

authorized committees or agents (2 U.S.C. § 434(c) and 11 CFR 109.2(b)); or

2. **An in-kind contribution** to the Presidential candidate if the expenditure were made in consultation with the Presidential campaign. Only that portion of the expenditure allocable to the Presidential candidate would be considered an in-kind contribution chargeable to his expenditure limits.

*Expenditures by Delegate Slate.* If a delegate campaigns through a delegate slate, the delegate slate becomes a political committee if its expenditures exceed \$1,000 during a calendar year. 2 U.S.C. § 431(4). The delegate slate political committee would be subject to the reporting requirements, contribution limits and prohibitions of the Act relating to all other political committees. Expenditures for public media advertising made by the delegate slate committee to advocate selection of a delegate, but which also refer to a Presidential candidate, would be considered allocable independent expenditures or allocable in-kind contributions made by the committee on behalf of the Presidential candidate. 2 U.S.C. §§ 434(b)(6)(B), 441a(a) (7) and 441a(b)(2). (Date Issued: March 10, 1980; Length: 4 pages)

**AO 1980-6: Association's Solicitation Plan; Contributions Made by Corporate Check**

*Association's Solicitation Plan.* A plan proposed by the Farm Bureau, Inc. (the Farm Bureau), a trade association, to solicit contributions from its members is not permissible under the Act and Commission Regulations.

Under the plan, the Farm Bureau would have combined the collection of annual membership dues with the solicitation of contributions to its proposed separate segregated fund, Agripac. Members would have been billed for both a contribution to Agripac (in an amount specified by the Farm Bureau) and their dues. Members who did not wish to contribute to Agripac could then have requested a refund for the amount of the contribution. The plan is not permissible

because the Farm Bureau would not have merely suggested contribution guidelines, permitted by 11 CFR 114.5(a)(2), but it would have required that contributions be for a specified amount. Moreover, the Farm Bureau would not have informed the members that they were free to contribute more or less than the specified amount, as required by 11 CFR 114.5(a)(2) through (5).

Since the Farm Bureau's solicitation plan was not permissible, the Commission did not decide on whether the method it proposed for separating contributions and dues was permissible.

*Contributions Made By Corporate Check.* An individual who is a stockholder in a small, closely-held corporation may not make a combined payment of membership dues and a contribution to the Farm Bureau with the corporation's check. Payment by corporate check would result in a prohibited contribution from the corporation unless the check were drawn on a nonrepayable corporate account established for the individual. (Date Issued: April 9, 1980; Length: 4 pages)

**AO 1980-7: Political Contributions by State-Chartered Corporation**

The Central Capital Corporation (Central Capital), a wholly owned subsidiary of Central Savings and Loan Association (Central Federal), may make contributions to candidates for state and local office as permitted by California law.

Central Federal is a federally chartered corporation; its subsidiary Central Capital is a state-chartered corporation. Although the Act prohibits a federally chartered corporation from making contributions or expenditures in connection with any election for any political office (2 U.S.C. § 441b), that prohibition does not extend to a state-chartered subsidiary provided that it is a distinct legal entity from its parent corporation. In this case, as long as there are no circumstances to suggest Central Capital and Central Federal are one entity, Central Capital is not subject to the Sec. 441b prohibition on

contributions by federally chartered corporations. (Date Issued: March 4, 1980; Length: 2 pages)

**AO 1980-8: Transfer of Funds From State PAC to Federal PAC**

The transfer of funds from the Beloit Corporation's state political action committee (State PAC) to its federal political action committee (Federal PAC) would be permissible under the circumstances described in the opinion.

In December 1979, the Beloit Corporation consolidated its State PAC and Federal PAC into the Beloit Corporation PAC (the Committee). At the time of consolidation, the balance of the State PAC's funds (\$216.45) was transferred to the Committee. Since \$200.00 of the transferred funds had previously been transferred by the Federal PAC to the State PAC and were, therefore, funds permissible under the Act, the Committee may retain the funds. The remaining \$16.45 may also be retained by the Committee provided that the State PAC functioned under Wisconsin law as a separate segregated fund whose contributions came from individuals or the Committee can demonstrate the funds represented contributions permissible under the Act. (Date Issued: March 13, 1980; Length: 2 pages)

**AO 1980-9: Communication Costs Paid by Political Committee**

Costs incurred by Arizonans for Life (the Committee) in printing and mailing a letter which contained statements relating to Senator Edward M. Kennedy's Presidential candidacy are not considered "independent expenditures." Costs of the letter must, however, be reported as general disbursements by the Committee in accordance with 2 U.S.C. § 434(b)(4)(H) and 434(b)(6)(B)(v).

Although the letter clearly identified Senator Kennedy as a candidate for Federal office and, as indicated by the request, was not produced in cooperation or consultation with Senator Kennedy's campaign, the letter still did not

qualify as an independent expenditure, as defined by 2 U.S.C. § 431(17), because it did not **expressly advocate the election or defeat** of Senator Kennedy. Commission Regulations specifically define "express advocacy" as a communication which contains, but is not limited to, such words as: "vote for," "cast your ballot for," "Smith for Congress," or, conversely, "vote against," "defeat," or "reject." 11 CFR 109.1(b)(2). (Date Issued: March 13, 1980; Length: 2 pages)

**AO 1980-10: Title of a Corporate Political Action Committee**

United Telecom Political Action Committee, the separate segregated fund of United Telecommunications, Inc. (the Committee), must change its official name to "United Telecommunications, Inc. Political Action Committee" since the 1979 Amendments to the Act require a separate segregated fund to include the full name of its connected organization in its title. 2 U.S.C. § 432(e). Further, the Committee must file an amended Statement of Organization with the Commission reflecting this name change. 2 U.S.C. § 433(c).

While its official name must appear on all disclosure reports and notices of sponsorship (2 U.S.C. § 441d), the Committee may continue to use its abbreviated name, "United Telecom Political Action Committee," on its letterhead and on committee checks. (Date Issued: March 10, 1980; Length: 2 pages)

**AO 1980-11: Contributions by Spouse**

An individual who has neither a personal checking account nor a joint checking account may make contributions to Rufus C. Phillips III's 1978 Senatorial campaign by using a check drawn on the account of a spouse, even if the spouse has already contributed \$1,000 to the candidate. However, the check, or an accompanying written statement, must indicate whose contribution the check represents and must be signed by the intended contributor. (Date Issued: March 10, 1980; Length: 2 pages)

**AO 1980-14: Transfer of  
Campaign Materials**

Ralph M. Hall may use campaign materials from his 1972 campaign in his 1980 campaign. The value of the materials must be reported as an in-kind contribution from Mr. Hall to his 1980 principal campaign committee, Hall for Congress.

The Act and Commission Regulations permit the unlimited transfer of funds between a candidate's previous campaign committee and his or her current committee provided none of the funds transferred contain contributions prohibited under the Act. 11 CFR 110.3(a)(2)(iv) and 2 U.S.C. § 441a, 441b, 441c and 441e. In this case, since the campaign materials to be transferred were originally purchased by Mr. Hall from personal funds, and thus do not represent contributions prohibited under the Act, the amount to be transferred is not limited. 11 CFR 110.3(a)(2)(iv). (Date Issued: March 21, 1980; Length: 2 pages)

**AO 1980-16: Corporate Payment of Expenses  
for Candidates' Participation  
in Charity Event**

Corporate payment of the expenses incurred by federal officeholders during their participation in a charity-fundraising golf tournament sponsored by the Danny Thompson Memorial Leukemia Fund would not constitute either contributions or expenditures under the Act (2 U.S.C. §§ 431(8) and (9)), even though some of the officeholders may also be candidates for federal office. The major purpose of the golf tournament is to raise funds for leukemia research rather than to promote the nomination or election of any candidate. Therefore, as long as the tournament neither solicits campaign funds nor advocates the election of a participating candidate, corporate sponsors of the event may provide transportation, lodging and meals to the candidates without making prohibited corporate contributions. (Date Issued: March 21, 1980; Length: 2 pages)

**AO 1980-17: Fundraising by  
Multicandidate Committee**

The Alternatives Fund (TAF), a multicandidate political committee, may contract with individuals to solicit contributions to TAF. Under the terms of a contract, TAF would reimburse each individual for all receipt-verified expenses incurred by the fundraising effort and would pay each individual a fixed percentage of the total contributions he/she raised. By receiving reimbursement for his/her expenses, the fundraiser would avoid making a contribution to TAF. Moreover, since the services rendered by the individual fundraisers would qualify as uncompensated volunteer services, they would not be considered in-kind contributions to TAF even if the percentage fee were less than the normal and usual charge paid for such services. 11 CFR 100.4(a)(iii)(A).

If, however, TAF contracted with a person who could not provide volunteer services under the Act, such as a corporation or government contractor, TAF would have to pay the usual and normal charge for fundraising services. Any difference between the usual and normal charge and the price paid by TAF to the fundraising organization would result in an in-kind contribution to TAF and would be subject to the Act's limits and prohibitions on contributions. 2 U.S.C. §§ 441a and 441b.

Total funds raised by the fundraisers must be recorded and reported as contributions. The percentage fees paid to the fundraisers, as well as reimbursements of fundraising costs, must be reported as expenditures by TAF. (Date Issued: March 28, 1980; Length: 3 pages)

**AO 1980-18: Separate Segregated Fund  
Established by Four  
Affiliated Corporations**

Four affiliated corporations, the Kanter Corporation, ITI Corporation, National Bank of Florida and the Bank of Florida in South Florida, may jointly sponsor a separate segre-

gated fund, KAN PAC.<sup>1</sup> Neither the Act nor Commission Regulations preclude joint sponsorship of KAN PAC by the four corporations because they meet the requirements for affiliation spelled out in Commission Regulations at 11 CFR 110.3(a)(1)(iii)(A). Specifically, the controlling interest in the voting stock of each company is owned beneficially by Joseph H. Kanter or the Kanter Corporation, which, in turn, is owned by Mr. Kanter and his immediate family. Since the corporations meet the affiliation requirement, their proposed plan to allocate KAN PAC's administrative and solicitation expenses (which are not reportable as contributions or expenditures under the Act) would also be permissible. 2 U.S.C. §§ 431(8)(B)(vi) and (9)(B)(v). (Date Issued: April 25, 1980; Length: 3 pages)

**AO 1980-19: Sale of Poll  
by Labor Union**

The sale of poll results by the Wendell Young for Congress Committee (the Committee) to the United Food and Commercial Workers Union (the Union) would result in a prohibited contribution to the Committee by the Union. By selling the opinion poll, which a professional polling firm conducted under contract to the Committee, the Committee would recoup the fee it had paid the polling firm for the poll (\$9,400), while still receiving the benefit of the information produced by the poll. The Union, in effect, would be paying for the poll on behalf of the Committee, thus making a prohibited in-kind contribution to the Committee. (Date Issued: March 14, 1980; Length: 3 pages)

**AO 1980-20: Nonpartisan Voter  
Registration Communication**

Rexnord, Inc. may use corporate funds to pay for a general circulation newspaper advertisement that reads "Please Register To Vote" and that includes "Rexnord, Inc." printed in a lower

corner of the ad because:

1. Rexnord's activity involves only a communication urging nonpartisan participation — not personal services, such as driving people to polls, which would require joint sponsorship with a nonpartisan organization.
2. The Rexnord advertisement lacks any suggestion that the reader designate a political party preference when registering to vote.
3. The ad does not appeal for political participation on the part of any identifiable group to assure the well-being of a particular political party.
4. By placing the ad in a general circulation newspaper, Rexnord has not tried to determine the political preference of the audience who may read the advertisement. 11 CFR 114.4.

This opinion overrules AO 1979-48, also issued to Rexnord, Inc. and summarized in the December 1979 issue of the *Record*. Chairman Robert O. Tiernan and Commissioner Thomas E. Harris filed a dissenting opinion. Commissioner Frank P. Reiche filed a concurring opinion. (Date issued: May 1, 1980; Length: 10 pages, including dissenting and concurring opinions.)

**AO 1980-21: Donation of Baseball Tickets  
to Host Committee  
of National Party Committee**

The New York Yankee Baseball Club may donate tickets to the Host Committee of the National Democratic Convention for free distribution to convention delegates. The tickets will not be considered a prohibited corporate contribution by the Yankee Ball Club to the Host Committee. 11 CFR 114.1(a)(2)(viii). Nor will the tickets be considered a convention expenditure. 11 CFR 9008.7(d)(4).

The Yankee Ball Club's donation of tickets is considered a permissible in-kind contribution to the Host Committee since the free distribution of tickets will assist the Host Committee in welcoming convention delegates to New York City. 11 CFR 9008.7(d)(2). (Date Issued: April 20, 1980; Length: 2 pages)

<sup>1</sup>KAN PAC's official title will include the names of all four corporations as required by 2 U.S.C. § 432(e)(5).

**AO 1980-22: Corporate Sponsorship  
of Town Meetings**

Costs incurred by the American Iron and Steel Institute (an incorporated trade association) and its member companies in sponsoring a series of town meetings in which federal officeholders (who may be candidates) participate would not constitute either contributions or expenditures under the Act.

Since the purpose of the town meetings is to provide a forum for discussion of issues facing the steel industry, and not to nominate or elect candidates to federal office, Senators and Congressmen may participate in meetings held in their state or district provided:

1. All remarks, including pre-meeting publicity, are restricted to steel industry issues and do not include any statements expressly advocating the election or defeat of any federal candidate; and
2. Campaign contributions are neither solicited nor accepted by the federal officeholders at the event. (Date Issued: April 15, 1980; Length: 2 pages)

**AO 1980-23: Name of Separate  
Segregated Fund**

The Agricultural and Dairy Education Political Trust (ADEPT), a separate segregated fund, must modify its official name to include the full name of its connected organization, the Mid-America Dairyman, Inc., as required by the 1979 Amendments to the Act. 2 U.S.C. §432(e). On documents such as checks and letterhead, however, ADEPT may use an abbreviated title consisting of a prefix before its current name, as long as the abbreviated title makes clear to the public who sponsors the separate segregated fund. "Mid-Am Dairyman" or "Mid-America Dairyman," two suggestions offered by ADEPT, would be adequate; "Mid-Am" or "Mid-America" would not be sufficiently recognizable by the public.

Its official name and the abbreviation must appear on an amended Statement of Organization, on all disclosure reports required under the

Act, and on any sponsorship notices required under 2 U.S.C. §441d. 2 U.S.C. §433(c). (Date Issued: April 14, 1980; Length: 2 pages)

**AO 1980-25: Authorization Notice  
on Candidate's Issue Letter**

Mr. Jack Smilowitz, a Congressional candidate, is not required to include an authorization notice on a letter he intends to distribute to the public, in which he opposes a California ballot initiative. Although Mr. Smilowitz's proposed letter identifies him as a candidate and gives his party affiliation, an authorization notice is not required because the letter does not expressly advocate his election or solicit contributions to his campaign committee. 2 U.S.C. §441d. Costs incurred in writing, photocopying, and distributing the letter are reportable as expenditures by his campaign committee. 2 U.S.C. §434(b)(4). (Date Issued: April 20, 1980; Length: 2 pages)

**AO 1980-26: Contributions by  
Government Contractor**

The Stenholm for Congress Committee (the Committee) may retain contributions from an individual who is **not** a government contractor but who contracts with businesses which are under contract to the federal government. Commission Regulations specifically state that the Act's ban on contributions by government contractors does not apply to this type of situation. 11 CFR 115.1(d). (Date Issued: April 20, 1980; Length: 2 pages)

**AO 1980-27: Earmarking Portion  
of Membership Dues  
For Separate Segregated Fund**

The Federation of American Hospitals (FAH), an incorporated trade association, may not solicit contributions to its separate segregated fund (FedPac) by allowing individual members to direct a fixed percentage of their membership dues to FedPac without increasing the total amount of their dues.

The portion of dues earmarked for FedPac would not be personal contributions from members but, rather, would be corporate money



diverted to FedPac by the member's designation. Since corporate funds thus allocated to FedPac would be used in connection with federal elections, FAH's proposed solicitation procedure is prohibited under 2 U.S.C. §441b(a). (Date Issued: April 28, 1980; Length: 2 pages)

**AO 1980-28: Party Ad Promoting  
Delegate Selection**

A payment made by the Republican Committee of Chester County (the Committee) for newspaper advertising which advocates the selection of specific delegates to attend the Republican National Convention, and which may also include an endorsement of the delegates by a Congressional candidate, would be an "expenditure" by the Committee since the purpose of the advertising is to influence a federal election. 2 U.S.C. §431(9)(A)(i). The Act specifically defines a federal election to include a "primary election held for the selection of delegates to a national nominating convention of a political party." 2 U.S.C. §431(1)(C). The Committee would report payments for the proposed newspaper advertising as follows:

*Endorsement of Delegates by the Committee Only.* If the advertising exceeded \$1,000 (or exceeded \$1,000 when combined with other contributions and expenditures made for federal elections during 1980), the Committee would have to register as a political committee and report the expenditure. 2 U.S.C. §§433 and 434.

*Endorsement of Delegates by the Committee and a Congressional Candidate.* If the newspaper advertising also included an endorsement of the delegates by a Member of Congress who is a candidate for re-election, the Committee would not have to allocate the costs of the advertising between the Congressional candidate and the delegates **unless** the purpose of the advertisement was also to influence the re-election of the Member of Congress. If the advertising did reflect an intent to influence the re-election of the Congressional candidate, an in-kind contribution to the candidate by the Committee

would result. In that event, the candidate's campaign committee would have to report the advertising as both an in-kind contribution to, and an expenditure by, the campaign committee and would have to comply with the allocation regulations. 11 CFR 106.1. (Date Issued: April 14, 1980; Length: 4 pages)

**AO 1980-29: Use of  
Campaign Funds**

Congressman Norman D. Shumway may use his campaign funds to pay for his expenses as a delegate to the National Republican Nominating Convention. The Commission has stated in previous opinions that candidates and their committees have wide discretion in deciding how to spend campaign funds.

If campaign funds are used to defray his convention expenses, the Congressman's campaign committee must report those payments as an "expenditure" if the purpose of the payment is to influence Mr. Shumway's election. If the payment is made for some other purpose, the committee must nevertheless report it as a general disbursement. 11 CFR 104.3(b)(4)(i) and (ii). (Date Issued: April 28, 1980; Length: 2 pages)

**AO 1980-30: Conversion of 1980 Campaign  
Committee Into  
1982 Campaign Committee**

Excess campaign funds from Frank Askin's 1980 Congressional campaign may be used for any lawful purpose, but may not be converted to personal use. 2 U.S.C. §439a. Mr. Askin, previously registered as a House candidate seeking nomination in New Jersey's June 3 primary, ceased to be a candidate for that election on March 10, 1980. On that date, he amended his Statement of Candidacy, redesignating his 1980 campaign committee as the principal campaign committee for his 1982 election. Assuming that there were no outstanding debts or obligations from Mr. Askin's 1980 primary campaign, the funds remaining from the 1980 campaign may be used for:

1. Making pro rata refunds to contributors to the 1980 campaign; and
2. Supporting the candidate's nomination in the 1982 primary election.

The 1982 campaign committee must, however, report refunds of contributions. 11 CFR 104.3 (b)(2)(v)(A) and (B).

Undesignated contributions received between March 10 (the date on which Mr. Askin ceased to be a candidate for the 1980 election and became a candidate for the 1982 election) and the 1982 primary count toward his 1982 primary election. A contributor to his 1980 campaign (prior to March 10, 1980) may also contribute to his 1982 primary election. A separate contribution limit applies to each election.

Because Mr. Askin is now a candidate only for an election in 1982, his committee must file semiannual reports, required during a non-election year, rather than quarterly reports, required during election years. 11 CFR 104.5(a). The committee must identify (on Schedule A) each person contributing in excess of \$200 during 1980, regardless of whether the contributions were for the 1980 or 1982 election. The report should include a notation, however, indicating the election for which the contribution was intended.

Expenses paid by the campaign committee for publishing and distributing a newsletter promoting Mr. Askin's candidacy as a delegate to the Democratic National Convention must be reported by the committee. 2 U.S.C. §434. Since a reference to Senator Edward Kennedy (to whom the candidate had pledged his support) was not made in consultation with the Senator or any of his authorized committees or agents, the committee does not have to report a portion of the newsletter expenses as an in-kind contribution to Senator Kennedy. Nor are the expenses chargeable to Senator Kennedy's expenditure limit. 2 U.S.C. §441a(b).

If Mr. Askin's Congressional district is redesignated as a result of redistricting, the 1982 campaign committee must amend its Statement of Organization (FEC Form 1) to reflect the change. Commissioner Frank P. Reiche filed a concurring opinion. (Date Issued: May 30, 1980; Length: 9 pages, including concurring opinion.)

#### **AO 1980-32: Use of Excess Campaign Funds to Retire Campaign Debts**

The Dannemeyer for Congress Committee (the Committee) may use excess campaign funds raised in 1979 to retire debts of the candidate's 1978 campaign for Congress and his 1976 campaign for state assembly, if permitted by state law.

Since the Committee's 1979 fundraising occurred after it had begun to engage in financial activity for Mr. Dannemeyer's 1980 Congressional campaign, and since the Committee was not specific as to the proposed use of the funds raised, the funds received in 1979 count as contributions to his 1980 election. The Act and Commission Regulations permit political committees to use excess campaign funds for a variety of specified purposes and for "any other lawful purpose." 2 U.S.C. §439a; 11 CFR 113.2. The Committee's use of 1980 excess campaign funds to retire debts of previous campaigns is considered a "lawful purpose." Commissioners Thomas E. Harris and Frank P. Reiche filed a dissenting opinion. (Date Issued: May 21, 1980; Length: 5 pages, including dissenting opinion.)

#### **AO 1980-33 and Supplement: Trade Association's Nonpartisan Voter Drive**

The National Association of Realtors (the Association), a nonprofit, incorporated trade association, may finance voter registration and get-out-the-vote programs directed to both Association members and the general public.

*Program for Members.* The Association may make either partisan or nonpartisan communications to its members through phone banks. 11

CFR 114.3(c)(3), 114.7(h) and 114.8(h). It may also distribute voting materials prepared by election officials. 11 CFR 114.4(c)(2).

*Program for General Public.* With regard to four radio announcements submitted for Commission approval, the Association may transmit three to the general public. These three transcripts, which urge voter registration, satisfy the criteria that the Commission applied to a newspaper advertisement in AO 1980-20:

1. The communications lack any suggestion that a person designate a political party preference when registering to vote;
2. The communications do not appeal to any identifiable group to ensure their political well-being; and
3. By appealing to the general public in a radio broadcast, the Association has not tried to determine the political preference of the audience.

The fourth communication (considered in the Supplement to AO 1980-33) also satisfies the nonpartisan criteria, but differs from the other three in its suggestion that the public obtain registration information at the real estate offices of certain Association members. The Association may use this transcript in communications with the general public, provided the information supplied by the realtors is prepared by local election officials for distribution to the general public and is distributed in a nonpartisan manner, without endorsing, supporting or promoting registration with a particular party. 11 CFR 114.4(c)(2).

Eight proposed get-out-the-vote announcements, encouraging voting rather than registration, also meet the three nonpartisan criteria set out in AO 1980-20 and summarized above. One of these announcements, however, which suggests that the public obtain absentee voting information at realtor offices, may be used only if it also complies with the provisions of 11 CFR 114.4(c)(2).

Commissioners Robert O. Tiernan and Thomas E. Harris filed dissenting opinions. (Opinion/

Date Issued: June 2, 1980; Length: 8 pages, including dissenting opinions; Supplement/Date Issued: August 6, 1980; Length: 6 pages)

#### **AO 1980-34: Artwork Donated to (and Sold by) Political Committee**

Volunteer services supplied by artists in creating artwork for the Connally for President Committee (the Committee) would not constitute a contribution to the Committee, as long as the Committee reimburses the artists for the costs of artwork materials. However, the full purchase price of each artwork, when later sold by the committee, would constitute a contribution to the Committee by the purchaser and would be subject to the Act's limits and prohibitions on contributions. 2 U.S.C. §§441a, 441b, 441c and 441e.

The sale of the artwork by an art dealer would constitute a political fundraising activity (rather than a commercial transaction) since revenue from the sale of the artwork would be transmitted to, and used by, the Committee to retire its campaign debts. Accordingly, the Committee would have to instruct the art dealer to:

- Identify each artwork as part of the Connally Committee collection; and
- Advise potential buyers that the proceeds from the sale of the artwork count as a contribution to the Committee.

Further, all the Committee's financial transactions related to the sale of the artwork, reimbursements to the artists for basic materials used to create the artwork, and the commission paid to the art dealer would have to be reported by the Committee as expenditures, according to the provisions of 2 U.S.C. §434.

The Commission expressed no opinion on the possible application of tax laws to the artwork sales since those issues are not within its jurisdiction. Commissioner Frank P. Reiche filed a dissenting opinion. (Date Issued: May 23, 1980; Length: 7 pages, including dissenting opinion.)

#### **AO 1980-36: Preemption of State Law**

The Ruth Miller for Congress Committee does not have to comply with an Ohio statute requiring campaign advertisements to disclose the name and address of the secretary or chairman of the committee responsible for the communication. Since the Act and Regulations supersede and preempt state law with respect to disclosure required in conducting campaigns for federal office (2 U.S.C. §453), the advertising notice requirements of §441d, which do not require the name or address of the sponsoring individual, supersede the Ohio statute. (Date Issued: April 28, 1980; Length: 2 pages)

#### **AO 1980-37: Contributions from Government Contractor**

The Stenholm for Congress Committee (the Committee) must refund contributions received from a government contractor and disclose the refund in its next report.

The contributions must be returned because the contributor, the sole proprietor of a trucking business involved in four contracts with the U.S. Postal Service, is specifically prohibited by the Act and Commission Regulations from making contributions or expenditures to influence federal elections from business, personal or other funds under his control. 11 CFR 115.5. (Date Issued: May 23, 1980; Length: 2 pages)

#### **AO 1980-38: Allocation of Computer-Use Expenses Between State and Federal Committee**

An agreement to allocate computer rental and data entry costs between the Allen for Congress Committee (the Federal Committee) and the campaign committee of a Michigan legislative candidate (the State Committee) is permitted by Commission Regulations provided that the committees allocate costs in a manner that reflects the actual use and benefit to each campaign. 11 CFR 106.1 and 110.8(d)(3).

Under the agreement, the two campaign committees would evenly divide computer costs for

data entry of voter information in areas where their legislative and Congressional districts overlap. Each campaign committee would then absorb all costs of data entry and rental in areas that do not overlap. To ease bookkeeping requirements, the Federal Committee has paid all data entry costs and the State Committee has paid a security deposit and rental for the use of the computer. Each committee plans to reimburse the other for those costs assignable to it. The computer costs would be reported as follows:

#### **Payments by the Federal Committee**

Since the Federal Committee's payments for data entry of voter information are not for the purpose of influencing the state candidate's election, but rather for the purpose of influencing Mr. Allen's reelection, the Federal Committee must report the data entry costs as **operating expenditures**. 11 CFR 104.3(b)(2)(i).

#### **Reimbursements by the State Committee to the Federal Committee**

Reimbursements to the Federal Committee by the State Committee for its share of the data entry costs must be reported by the Federal Committee as **receipts** in the form of offsets to operating expenditures. 11 CFR 104.3(a)(3)(ix)(A), (B) and (C). Since payments to the Federal Committee must be from funds permissible under the Act, and since the State Committee is not a political committee under the Act, the State Committee must establish one of the following accounting procedures if it accepts funds prohibited by the Act:

1. Establish a separate account for funds permissible under the Act and from which payments to the Federal Committee would be made; or
2. Demonstrate through a reasonable accounting method that, whenever such payments are made, the State Committee has received sufficient funds permissible under the Act to make payments to the Federal Committee.

In addition, the State Committee must keep records, which it will make available to the

Commission upon request. 11 CFR 102.5(b)(1)(i) and (ii) and 100.7(a)(1)(i)(D).

#### **Federal Committee's Obligations to the State Committee**

The Federal Committee's obligations to the State Committee for its outstanding share of the computer rental and security deposit are expenditures by the Federal Committee. 11 CFR 100.8(a)(2). **If the committees' agreement was in writing**, the Federal Committee must report its obligations as of the date the agreement was made. **If the agreement was not in writing**, the Federal Committee must report the obligation and actual payments according to 11 CFR 104.11.

The Commission expressed no opinion on the application of Michigan law to the Federal Committee's payments to the State Committee. This opinion supersedes Advisory Opinions 1976-110 and 1978-67 with respect to payments from political organizations that are not "political committees" under the Act. (Date Issued: May 16, 1980; Length: 4 pages)

#### **AO 1980-39: Investment of Funds in Money Market Fund**

The Fluor Public Affairs Committee (Fluor-PAC), the separate segregated fund of the Fluor Corporation, may invest its campaign funds in a professionally managed money market fund (11 CFR 103.3), provided Fluor-PAC returns campaign funds invested in the money market fund to its campaign depository **before** the funds are used to make expenditures.

Although Fluor-PAC need not file an amended Statement of Organization designating the money market fund as an additional campaign depository, Fluor-PAC must fulfill the following reporting requirements:

1. Total campaign funds invested in the money market fund must be included in the total amount of funds reported by the committee as "cash-on-hand." 11 CFR 104.3(a)(1).
2. Fluor-PAC must report as a receipt any income earned on its investment. 2 U.S.C.

§434(b)(2)(J) and (b)(3)(G). (Date Issued: May 16, 1980; Length: 3 pages)

#### **AO 1980-40: Multicandidate Committee Status for Affiliated Committees**

The Transamerica Corporation Political Action Committee (TRANSPAC) and its affiliated separate segregated fund, Occidental Life Insurance Company of California Political Action Committee (OXY-PAC), may qualify as multicandidate committees once they have collectively satisfied the Act's requirements for multicandidate committee status. 2 U.S.C. §441a(a)(4). Together, that is, they must have been registered for at least six months, must have received contributions from more than 50 donors and contributed to at least five federal candidates.

As affiliated committees, TRANSPAC and OXY-PAC are subject to a single contribution limit with regard to both contributions received and contributions made. 2 U.S.C. §431(4)(B) and §441a(a)(5). (Date Issued: June 9, 1980; Length: 3 pages)

#### **AO 1980-41: Use of Candidate's Excess Campaign Funds After His Death**

Excess campaign funds and assets of the Slack for Congress Committee, the principal campaign committee of the late Congressman John M. Slack, Jr., may be transferred to his family or his office staff.

Under the 1979 Amendments to the Act, candidates who were not members of Congress on the day the 1979 Amendments were enacted into law (January 8, 1980) may not use excess campaign funds for personal use. 2 U.S.C. §439a; 11 CFR 113.2. Since, however, Mr. Slack was a member of Congress at that time, the proposed use of the funds would be permissible, provided West Virginia state law does not make the proposed transfer unlawful. (Date Issued: May 16, 1980; Length: 2 pages)

**AO 1980-42: Fundraising Concerts Conducted for Senatorial Campaign Committee**

Volunteer services provided by entertainers for fundraising concerts to be held on behalf of the Hart for Senate Campaign Committee, Inc. (the Committee) would not count as in-kind contributions to the Committee, provided the Committee reimbursed the entertainers for their expenses. 2 U.S.C. §431(8)(B). Further, the Committee could contract with a promoter who, as an agent of the Committee, would handle concert arrangements.

Under the contractual arrangements, ticket sales could be made at outlets normally used for commercial concerts, and tickets issued could be identical to those issued for nonpolitical concerts. Advance publicity and notices at sales locations, however, would have to inform ticket purchasers that the concert would benefit the Committee.

Since ticket sales would be treated as contributions from the purchasers, the proceeds would have to be handled as contributions. The Committee would have to establish controls to ensure that purchasers did not violate the Act's dollar limits or prohibitions on contributions. The identity of contributors would have to be obtained when any person's ticket purchases exceeded \$50 at the same selling location. 2 U.S.C. §432(b); 11 CFR 102.9.

Checks for ticket purchases would not have to be made payable to the Committee, but they would have to be deposited in the special account established for the fundraiser. Proceeds deposited in the special account would then be forwarded to the campaign's treasurer within 10 days of their receipt. 2 U.S.C. §432(b)(1); 11 CFR 102.8(a). The treasurer, in turn, would have to deposit the proceeds in a designated campaign depository within 10 days of their receipt. 11 CFR 103.3(a). Alternatively, the promoter, as the Committee's agent, could transfer the proceeds from the special account directly to a designated Committee account

within 10 days of their receipt. The promoter would also have to keep records for all ticket proceeds. 2 U.S.C. §432; 11 CFR 102.9.

The promoter could pay for concert expenses from ticket sale proceeds deposited in a special account established in an official campaign depository. Similarly, funds in this account could be used to pay the promoter the usual and normal fee for his services. The promoter would then forward the balance of the proceeds to the Committee. All expenses (including fees to the promoter) would be subject to the Act's record-keeping and reporting requirements. Commissioner Frank P. Reiche issued a dissenting opinion. (Date Issued: June 25, 1980; Length, including dissenting opinion: 14 pages)

**AO 1980-43: Reporting 1974 Debts by 1980 Committee**

Martin Frost, a candidate for reelection to the House of Representatives in 1980, may report outstanding debts of his 1974 Congressional campaign by either one of the following methods approved by the Commission:

1. Congressman Frost's 1980 campaign committee may consolidate the 1974 campaign debts with activities reported by the 1980 campaign committee. The 1980 committee would use separate contribution schedules (Schedule A's) to identify contributions received to retire the 1974 debt and contributions received for the 1980 campaign. In addition, the committee would file a separate debt schedule (Schedule C) identifying the 1974 debts until they are retired.
2. Alternatively, Congressman Frost may continue to file separate, semiannual reports as a 1974 candidate until the debts for that election are extinguished. The 1980 Committee would continue to file quarterly. 11 CFR 104.3(d), 104.5(a)(2) and 104.11; and 2 U.S.C. §434(a)(2)(B). (Date Issued: May 23, 1980; Length: 2 pages)

**AO 1980-44: Collection Systems Proposed by Labor Organization for its Separate Segregated Fund**

Two collection systems proposed by the National Education Association (NEA) to collect contributions for its political action committee, NEA-PAC, would be permissible; however, two other proposed systems would not.

Under the current system, NEA members authorize deduction of a fixed sum from their pay checks for contributions to NEA-PAC and for their unified membership dues to NEA. To ease the administrative burden imposed by a provision of the Act requiring timely transmittal of political contributions to the treasurer of a political committee (2 U.S.C. §432(b)(2)), NEA proposed four alternative payroll deduction systems, all of which would be less costly and time-consuming than NEA's current collection system.

**Under the first proposed collection system**, the entire NEA-PAC contribution would be deducted from the first payroll deduction check of NEA's membership year. Membership dues would then be deducted from subsequent checks. No change would be made in the members' current payroll deduction authorization form. The **third proposed system** is identical to the first, except that the authorization form would indicate that NEA-PAC's contribution was being drawn entirely from the first payroll deduction check.

These two collection systems would **not** be permissible. By deferring its receipt of membership dues in order to facilitate member contributions to NEA-PAC, NEA would be giving "something of value, if not an advance . . . to NEA-PAC." Therefore, NEA's service would constitute a prohibited contribution from NEA to NEA-PAC. 2 U.S.C. §441b (b). Even if NEA members signed authorization cards agreeing to defer their membership dues, a prohibited in-kind contribution would still result since NEA — not its individual members — would be providing the deferred receipt of dues.

Under the **second proposed collection system**, the NEA-PAC contribution would be deducted in one lump sum from the last payroll deduction check after all membership dues had already been deducted from previous checks. There would be no change in the authorization form. The **fourth proposed system** is the same as the second except that the authorization form would indicate the change in the payroll deduction system.

These collection systems would be permissible because NEA-PAC's contributions would be deferred, rather than NEA's membership dues. Therefore, NEA would not be making a prohibited in-kind contribution to NEA-PAC. To be fully permissible, however, the second and fourth collection systems would also have to meet all legal requirements pertaining to the solicitation, collection and transmittal of contributions to NEA-PAC. (Date Issued: July 3, 1980; Length: 5 pages)

**AO 1980-45: Nonprofit Organization's Nonpartisan Voter Registration Drive**

Planned Parenthood of New York City, Inc. (PPNYC), a nonprofit corporation, may conduct nonpartisan voter registration drives for the general public at its clinics. Commission regulations specifically permit corporations and labor organizations to support such nonpartisan voter registration drives for the general public as long as these activities are jointly sponsored with a nonpartisan, nonprofit civic group and are conducted by the civic group. 11 CFR 114.14 (d). Although this regulation does not specifically address PPNYC's situation, where the qualified civic group unilaterally undertakes a voter registration drive without a corporate co-sponsor, the regulation does not require a civic group to find a corporate co-sponsor for an otherwise permissible activity. Commissioner Robert O. Tiernan filed a dissenting opinion. (Date Issued: June 11, 1980; Length, including dissent: 4 pages)

**AO 1980-46: Fundraising Plan  
of Independent Expenditure  
Committee**

Expenditures made by the National Conservative Political Action Committee (NCPAC) for a mass mailing that advocates a candidate's election and solicits contributions to his campaign through NCPAC (as a conduit) would be considered an in-kind contribution to the candidate's principal campaign committee, rather than an independent expenditure.

The solicitation system proposed by NCPAC for the mass mailing would consist of a letter suggesting that a contribution for the candidate be mailed to NCPAC, which would gather and transmit the contributions to the candidate's principal campaign committee. Even if no communication occurred between NCPAC and the candidate or any agents of his campaign, expenditures for the mass mailing would be an in-kind contribution to the candidate's principal campaign committee because, in accepting the earmarked contributions forwarded through NCPAC, the candidate's campaign would also be accepting the solicitation services provided by NCPAC.

NCPAC would be considered a conduit transmitting the contributions to the candidate's principal campaign committee. Since, however, NCPAC would exercise no control over the contributions made to the candidate, the contributions would not count as contributions by NCPAC and would not count against NCPAC's \$5,000 contribution limit. 11 CFR 110.6(d)(1). Instead, the contributions would count against the individual contributor's limits. 2 U.S.C. §441a(a) and 11 CFR 110.1.

As a conduit, NCPAC would be required to report the contributions to both the candidate's principal campaign committee and to the Federal Election Commission according to reporting procedures detailed in Commission Regulations. See 11 CFR 110.6(c)(4)(i), (ii) and (iii). Chairman Max L. Friedersdorf and Commissioner Joan D. Aikens filed dissenting opin-

ions. (Date Issued: June 25, 1980; Length: 9 pages, including dissents)

**AO 1980-47: Preemption of State Law  
Regulating Election Day  
Services**

The Federal Election Campaign Act (the Act) does not supersede or preempt a Maryland law that would prohibit the Conroy for U.S. Senate Committee from making payments for "walk around services" performed on election day. The Maryland law defines payments for "walk around services" to include the following activities which the Conroy for U.S. Senate Committee proposed to undertake: payments to campaign workers engaged in distributing campaign literature, sample ballots, or other campaign material; serving as poll watchers; and other campaign activities performed on the day of the election. (Date Issued: May 13, 1980; Length: 3 pages)

**AO 1980-48: Cooperative's Solicitation  
of Corporate Members'  
Stockholders**

A separate segregated fund proposed by the Mid-States Distributing Company (Mid-States), an incorporated cooperative association, may not solicit contributions from the shareholders of its corporate members. Commission Regulations define solicitable members as "all persons who are currently satisfying requirements for membership in a cooperative." 11 CFR 114.1(e). In this case, a direct membership relation does not exist between Mid-States and the shareholders of its corporate members. Mid-States could, however, solicit its own individual members. (Date Issued: June 9, 1980; Length: 3 pages)

**AO 1980-49: Use of Campaign Funds  
for Personal Living Expenses**

Steven D. Weinstein, a Congressional candidate, may use campaign funds for ordinary and necessary living expenses incurred during the 1980 campaign. The ban on converting "excess campaign funds" to personal use, contained in the 1979 Amendments to the Act (2 U.S.C. §439a), does not affect the



candidate's use of campaign funds for campaign purposes during the course of the campaign. (Date Issued: May 16, 1980; Length: 2 pages)

**AO 1980-50: Corporate Payment of Expenses in Connection with Separate Segregated Fund**

The United Merchants and Manufacturers, Inc. (the Corporation) may pay for certain expenses relating to a meeting that would introduce executive and administrative personnel to the Corporation's separate segregated fund (UM&M PAC).

At the proposed breakfast or luncheon meeting, the UM&M PAC directors would discuss the PAC's structure, philosophy and purpose, and would explain the contribution mechanisms available to solicitable employees, though contributions would not be collected at the meeting. The cost of food and transportation to the meeting would range from \$9 to \$22 per employee. The corporation may pay these expenses since they are incurred in establishing, administering and soliciting contributions to a separate segregated fund. 11 CFR 114.1(b). Because the meeting would not impart a prize or entertainment benefit to the employee, UM&M PAC need not reimburse the corporation for the meeting's expenses.

The Commission could not reach agreement on the question of whether the Corporation's payment of employee salaries for time spent traveling to and attending the meeting would be considered a cost of establishing, administering and soliciting contributions to a separate segregated fund, or whether the payment would constitute a prohibited corporate expenditure. If UM&M PAC were to hold the meeting on a non-working day, however, the question would not arise. (Date Issued: July 11, 1980; Length: 5 pages)

**AO 1980-51: Volunteer Services Provided by Bank Employees During Work Hours**

Volunteer services provided by an employee of the First Farmer and Merchants National Bank (the bank) to a political organization during work hours would not result in an in-kind contribution by the bank, as long as the volunteer activities involved only an "... occasional, isolated or incidental use" of the bank's facilities. 11 CFR 114.9(a)(1) (iii).

An employee of the bank could use up to one hour per week of regularly scheduled work time to provide services to a political committee and to act as its official treasurer (including lending his or her name to authorization notices for political advertising) because the volunteer activities would not prevent the employee from completing his or her normal amount of work. 11 CFR 114.9(a)(1)(i). However, the bank would have to be reimbursed for any additional overhead or operating costs the bank incurred as a result of the volunteer activities. 11 CFR 114.9(a). If paid by the employee, this reimbursement would be considered an in-kind contribution to the political organization. 2 U.S.C. §434.

The Commission expressed no opinion on the application of rules of the Comptroller of the Currency to the volunteer services since those rules are not within its jurisdiction. (Date Issued: September 3, 1980; Length: 3 pages)

**AO 1980-53: Donation of Promotion Item to Host Committees of National Conventions**

Kelly Services, Inc. may donate canvas tote bags to the host committees of the Democratic and Republican National Conventions for free distribution to delegates and convention attendees. Costs of providing the tote bags would not count against either national party's expenditure limits for the convention.

Kelly Services, Inc. may provide the tote bags, which will be inscribed with the convention's name on one side and the company's name on the other, because the bags are of nominal value, are provided solely for bona fide advertising purposes, and are provided in the ordinary course of business. 11 CFR 9008.7(c)(2). (Date Issued: June 17, 1980; Length: 2 pages)

**AO 1980-54: Contributions by  
National Bank**

The First National Bank of West Monroe may not make contributions to the Louisiana Political Action Council (LAPAC), a committee supporting candidates for state office. The Act prohibits national banks from making contributions and expenditures in connection with "any election to any political office" (2 U.S.C. §441b(a)), including donations to political committees which support candidates for state or local office as well as federal office. (Date Issued: June 17, 1980; Length: 2 pages)

**AO 1980-55: Corporate Assistance  
for Secretary of State's  
Voter Registration Drive**

The Office of the Secretary of State for Connecticut, which administers the state's elections, may accept corporate assistance in undertaking the following nonpartisan voter registration activities, provided these activities are permitted by state law:

*Reprinting and Distributing Voter Registration Information.* A corporation may use its facilities to reprint and distribute to the general public materials prepared by the Secretary of State on topics such as voter registration and party enrollment. These reprints may contain the corporation's logo, identification or a statement identifying the corporation's participation, such as: "Printed and distributed as a public service by the XYZ Corporation in conjunction with the Secretary of State of Connecticut." 11 CFR 114.4(c)(2).

*Voter Registration Drives.* Since the voter registration drives which the state's registrars of

voters plan to undertake would be completely nonpartisan, corporations may make their facilities available for the drives. The corporations' employees may also assist in the drives as officially appointed assistant registrars. 11 CFR 114.4(d)(2) and (3). (Date Issued: June 25, 1980; Length: 4 pages)

**AO 1980-56: Method of Counting Votes  
to Determine New Party  
Candidates' Eligibility  
for Public Funding**

The total number of votes cast in the 1980 Presidential general election for Mr. Barry Commoner will be counted to determine his eligibility for retroactive public funds and the appropriate amount due — regardless of whether his name appears on a state ballot as an independent candidate or as the Presidential candidate of the Citizens' Party. Under the Act, a minor or new party candidate is eligible for retroactive public funding if the candidate of a political party receives five percent or more of the total number of popular votes cast for President. 11 CFR 9004(a)(3). (Date Issued: June 17, 1980; Length: 2 pages)

**AO 1980-57: Fundraising to Defray  
Candidate's Litigation Fees**

The Bexar County Democratic Party (the Committee) may solicit funds for Congressman Henry B. Gonzalez, which Mr. Gonzalez will then use to defray litigation fees he incurred while challenging the nominating petitions of a potential Republican opponent. Since Mr. Gonzalez's litigation activity could influence the outcome of a federal election by preventing his opponent's name from appearing on the state ballot, funds raised by the Committee would be considered "contributions" to Mr. Gonzalez's principal campaign committee and would be subject to the reporting requirements, limitations and prohibitions of the Act.

The Committee could raise funds for Mr. Gonzalez's litigation fees by using either one of the following methods:

1. If the Committee solicited funds and contri-

buted them to Mr. Gonzalez's principal campaign committee, the Committee would be required to register and report as a "political committee" under the Act once it had received contributions in excess of \$5,000. 2 U.S.C. §§ 433 and 434. Contributions to the Committee by an individual and contributions by the Committee to Mr. Gonzalez would each be subject to a \$5,000 per year limit, provided the Committee qualified as a multicandidate committee (i.e., the committee had been registered for at least six months, had received contributions from more than 50 donors and had contributed to at least five federal candidates).

2. Alternatively, Mr. Gonzalez could mail out a fundraising letter on the Committee's letterhead. In this case, the fundraising would be an activity of Mr. Gonzalez's campaign. Therefore, expenditures made for the solicitation, and any funds received, would be expenditures by and contributions to Mr. Gonzalez's principal campaign committee. As such, they would be reportable by Mr. Gonzalez's campaign. The Gonzalez campaign committee would also be required to include a statement on the solicitation authorizing the fundraising activity. 2 U.S.C. § 441d. (Date Issued: June 25, 1980; Length: 4 pages)

**AO 1980-58: National Bank's Contributions to State Senator's Officeholder Expense Funds**

Union Bank and Trust Company (the Bank), a national bank in Grand Rapids, Michigan, may make donations payable by corporate check to the Officeholder Expense Funds of state senators. Michigan law prohibits public officials from using their officeholder expense funds to make contributions or expenditures to further their nomination or election to public office. The Act's ban on political contributions by national banks would not, therefore, apply to donations made to a state officeholder's expense fund if that fund is not utilized in connection with any election to any federal, state or local office. (Date Issued: June 25, 1980; Length: 3 pages)

**AO 1980-59: Corporate Funds Donated to Defray Administrative Costs of Trade Association's Separate Segregated Fund**

The Lawyers Title Insurance Company (LTIC), a corporation, may donate funds to an account maintained by the American Land Title Association (ALTA), a trade association, to defray the administrative and solicitation expenses of ALTA's separate segregated fund, the Title Industry Political Action Committee. Because the Act exempts administrative and solicitation expenses from the definition of "contribution" or "expenditure," LTIC may make this donation to ALTA (in addition to its membership dues) without violating the Act's prohibition on corporate contributions. 2 U.S.C. § 441(b)(2)(C) and § 431(8)(B)(vi) and 9(B)(v). Commissioners Thomas E. Harris and Robert O. Tiernan filed a dissenting opinion. (Date Issued: July 11, 1980; Length: 3 pages, including dissenting opinion)

**AO 1980-60: Contributions Accepted by Campaign Committee for Two Separate Elections**

The Galperin for Congress Committee (the Committee) may accept contributions for both a nominating convention, held on April 26, 1980, to select candidates for a June 3 special general election in West Virginia, and for a regular Congressional primary election (also held on June 3). Since the nominating convention and the Congressional primary are separate elections, separate limits would apply to contributions received for these elections. 2 U.S.C. § 441a(a)(6); 11 CFR 110.1(j)(1) and 110.2(d)(1). However, contributions accepted by the Committee for the nominating convention must have been received on or before April 26. Contributions received after April 26 would count as contributions for the June 3 primary election (11 CFR 110.1(a)(2)(ii)), **unless** the contributions are specifically designated for the convention and do not exceed the Committee's outstanding debts for the convention. (Date Issued: May 30, 1980; Length: 3 pages)

**AO 1980-62: Labor Union's Solicitation of Temporary Employees**

The Pipefitters Local 524 Political Action Fund (the Committee), the separate segregated fund of the Pipefitters Local 524 (the Local), may solicit contributions from one category of temporary employees (travel card holders) but **not** from another category (permit card holders).

The Committee proposed soliciting both types of temporary employees through a voluntary payroll deduction plan. One group, the travel card holders, are not members of the Local. They are, however, members of other local unions affiliated with the Local's national organization, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (United Association). Under Commission Regulations, the travel card holders are considered members of the United Association by virtue of being members of one of its affiliated local unions. The Committee may therefore solicit these employees because a subsidiary organization or its separate segregated fund may solicit members of its "parent organization," i.e., the United Association. (See also AO 1978-75.)

The other group of employees, the permit card holders, are not members of the Local or of the United Association. The Committee may not, therefore, solicit this group of employees. 2 U.S.C. §441b(b)(4)(A). Commissioners Thomas E. Harris and Frank P. Reiche filed concurring opinions. (Date Issued: July 3, 1980; Length: 6 pages, including concurring opinions)

**AO 1980-63: Costs of Fundraiser as In-Kind Contribution**

Costs (\$250) incurred by Mr. Collis Chandler for co-hosting a fundraiser on behalf of the Committee for Tim Wirth (the Committee) are reportable as an in-kind contribution to the Committee. Comparable costs (\$250) incurred by his **co-host**, Mr. Michael Murphy, are not, however, reportable as a contribution because

the fundraiser was held in his home. Under the 1979 Amendments to the Act, the costs of providing volunteer services on behalf of candidates, including costs of invitations, food and beverages, are not considered contributions to the candidate if:

1. The volunteer activity is conducted in the individual's home or a church or community room; and
2. The costs for such volunteer activity do not exceed \$1,000 per election. 2 U.S.C. §437f; 11 CFR 100.7(b) (4) and (5). (Date Issued: June 30, 1980; Length: 2 pages)

**AO 1980-64: Labor Organization's Payment of Members' Delegate Expenses**

The National Education Association (NEA), a national labor organization, may **not** use its general treasury funds to pay the travel and living expenses of NEA members who will be attending the Democratic and Republican national nominating conventions as delegates.

The Act explicitly prohibits labor organizations from making contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. The Commission's proposed delegate selection regulations reinforce this prohibition by explicitly stating that "all contributions to and expenditures by any delegate . . . are subject to the prohibitions of 11 CFR 110.4(a), Part 114; 2 U.S.C. §§441b and 441e." Moreover, the delegates' expenses would not be considered the type of exempted expenditure which a labor organization may make for nonpartisan get-out-the-vote drives directed to members. 11 CFR 114.3(c)(3). (Date Issued: July 9, 1980; Length: 3 pages)

**AO 1980-65: Solicitation Authorization Published in Trade Association Magazine**

The National Tire Dealers and Retreaders Association (NTDRA) may publish an authorization form in its bimonthly magazine, *Dealer News*, which requests authorization from member corporations to solicit their personnel. The form proposed by NTDRA must, however,

be revised to adequately explain the purpose and use of the form.

Although the *Dealer News* is distributed to both NTDRAs members and nonmembers (nonmembers may not be solicited under the Act), an authorization request could be published because it would not be considered a solicitation for contributions. Instead, the publication of the request form would be considered a method of obtaining approval from NTDRAs corporate members to solicit their stockholders, executive and administrative personnel and their families.

However, the authorization request, as proposed, is not sufficiently specific in stating its purpose. To meet the requirements of FEC Regulations and to avoid an improper solicitation of nonmembers, the form must make clear that: 1) only corporate members of NTDRAs may approve the solicitation; 2) approval may not be given if the corporation has already approved a solicitation by another trade association during the year; and 3) a corporation which is not already a member will not become a member by signing and returning the authorization form. 11 CFR 114.8(d)(3). (Date Issued: July 29, 1980; Length: 4 pages)

**AO 1980-67: Notices on Invitations;  
Contributions by Spouses**

*Authorization/Nonauthorization Notice.* Invitations to receptions hosted on behalf of the Russell B. Long Committee (the Committee) do not require a disclaimer notice stating who authorized and paid for the invitations. Although the primary purpose of the receptions is to gain support for Senator Long's campaign for the Senate, and those invited may be solicited for contributions at the reception, a disclaimer notice is not required because the invitations will not include any statement which expressly advocates the election of Senator Long or any statement which specifically solicits contributions (or mentions the possibility of soliciting contributions) to his campaign.

*Contributions by Spouses.* If a check contributed to the Committee is to count as a contri-

bution from husband and wife, both individuals must sign either the check or an accompanying letter which specifies what portion of the contribution is to be attributed to each. 11 CFR 100.7(c) and 104.8(d). If not so attributed, the entire amount of the check is considered a contribution from the person signing the check. This requirement applies regardless of the property laws of the state where the contributors reside.

A portion of a contribution drawn on a partnership account may not be attributed to a spouse of a partner, unless the spouse is also a member of the partnership. (Date Issued: August 12, 1980; Length: 5 pages)

**AO 1980-68  
and Supplement: Contributions to Runoff  
Campaign**

The Zell Miller for U.S. Senate Committee (the Committee) may, before the primary election takes place, establish an escrow account (or authorize a separate campaign committee) to accept contributions for a possible runoff election in Georgia. Moreover, the Committee may accept contributions for the runoff election from persons who have contributed up to \$1,000 to Mr. Miller's primary campaign. However, these contributions must be returned to the donors if Mr. Miller does not run in the primary runoff. 11 CFR 102.9(e).

Post-dated checks received by the Zell Miller for U.S. Senate Committee (the Committee) for a primary runoff election are considered contributions to the Committee as of the date the Committee receives them. They are subject to a separate contribution limit for the runoff election. A post-dated check must be reported as a memo entry for the reporting period during which it is received, but the amount should not be included in cash totals until after the check has been deposited. (Banks will not permit the deposit of post-dated checks until the date written on the check.) 2 U.S.C. §434(b); 11 CFR 102.9(a)(1) and (2). (Opinion/Date Issued: July 11, 1980; Length: 3 pages; Supplement/Date Issued: August 28, 1980; Length: 2 pages)

**AO 1980-69: Solicitation Form Used by Labor Union's Separate Segregated Fund**

The 101 Political Fund (the Fund), the separate segregated fund of the Hoisting and Portable Engineers Local Union 101 (the Union), may use a solicitation form that, when signed by a union member, authorizes the Fund to deduct a portion of the member's Vacation Fund. The Vacation Fund consists of payments made by the member's employer.

In a previous advisory opinion requested by the Fund on the permissibility of this solicitation system (AO 1979-60), the Commission concluded that the Vacation Fund could be used as a source of voluntary contributions to the Fund because it was maintained as an escrow account separate from the Union's treasury funds. Modified to reflect that advisory opinion, the new authorization form states that the amount to be deducted from the Vacation Fund (five cents per hour worked) is only a **suggested** amount and that a member may authorize an amount more or less than five cents per hour. Further, the revised form states that the Union will not favor or discriminate against a member based on the amount contributed to the Fund or based on a decision not to contribute. 11 CFR 114.5(a)(2). (Date Issued: July 24, 1980; Length: 4 pages)

**AO 1980-70: Purchase of Materials from Independent Expenditure Committee**

The Committee for Independent Expenditures for Republicans (the Committee) is a political committee which intends to make independent expenditures on behalf of several federal candidates during the 1980 general elections. The Committee may sell campaign materials it produces to an individual who intends to use the materials to make his own independent expenditures. The individual must observe the following guidelines:

1. The individual may publish advertisements purchased from the Committee without disclosing the name of the Committee. These

advertisements must, however, disclose the individual's full name as well as a statement that the advertisement is **not** authorized by any candidate or candidate's committee. 2 U.S.C. §441d.

2. The individual may make contributions of up to \$5,000 to the Committee during 1980. 2 U.S.C. §441a(a)(1) (C). However, funds spent to purchase campaign materials from the Committee are considered contributions to the Committee and count against the \$5,000 limit.

In addition, the individual may make independent expenditures in his own name (from personal funds) while acting as an officer of the Committee. (Date Issued: August 11, 1980; Length: 4 pages)

**AO 1980-71: Notices Required for Corporate Employee Solicitations**

The Oak Industries, Inc. Political Action Association (the Association), the separate segregated fund of Oak Industries, Inc., is not required to include a disclaimer notice on literature used to solicit contributions from the corporation's stockholders and their families and its executive or administrative personnel and their families. Since the disclaimer notice is required only for communications directed to the general public, and since Commission Regulations prohibit corporate separate segregated funds from soliciting the general public, the disclaimer notice would not apply to the Association's solicitation literature. 2 U.S.C. §441d and §441b(b)(4)(A)(i).

Although the 1979 Amendments to the Act repealed the requirement for a notice stating that a copy of a separate segregated fund's report was available for purchase from the FEC, the Association may continue to use the notice if it so desires. (Date Issued: July 29, 1980; Length: 2 pages)

**AO 1980-72: Law Partnership's  
Political Contribution Plan**

The law firm of Kilpatrick and Cody (the Partnership) may pay costs of establishing and operating a voluntary political contribution plan for its members without registering and reporting as a political committee provided the partnership does not spend in excess of \$1,000 to undertake certain activities that would "influence federal elections." Under the proposed contribution plan, each member of the partnership who wished to contribute to candidates for public office would establish a special bookkeeping account with the partnership. By writing a personal check, the partner could withdraw personal funds from this account to make contributions to the candidate or political committee of his/her choice. Any special account funds not contributed would be refunded at the end of the year to the individual who had set the funds aside. The partnership's bookkeeper would maintain records of the special accounts, as well as any contributions from the accounts, at a negligible cost to the partnership.

The costs incurred by the partnership in establishing and maintaining the contribution plan would not constitute "expenditures" because their purpose is not to influence federal elections. Rather, the purpose of the plan is to "facilitate the management of personal funds of participating partners." Moreover, the partnership indicates no intention to create a political committee since the member's decision to contribute funds to a candidate would be an individual, not a group, decision.

The proposed contribution program would become a political committee, however, if the partnership spent more than \$1,000 to influence federal elections. An attempt to influence elections would occur if:

1. The partnership distributed information within the firm which identified partners participating in the plan, the amounts of their contributions and the candidates to whom they contributed.
2. Participation in the plan was conditioned on a

formal or informal agreement to make, or to refrain from making, contributions to any particular candidate or class of candidates.

3. The program included any arrangement whereby several contributions for the same candidate would be accumulated and collectively forwarded to the candidate. (Date Issued: August 12, 1980; Length: 3 pages)

**AO 1980-74: Labor Organization's  
Membership Solicitation Program**

Operating Engineers Local 37 (Local 37) may use a proposed solicitation plan, provided that Local 37 modifies its contribution authorization form to indicate how the member can contribute an amount other than that suggested by the union. Under the proposed solicitation program, a member of the Local voluntarily signs an authorization card permitting the deduction and transfer of funds from his or her Vacation Fund to the separate segregated funds established, respectively, by the national labor organization of which Local 37 is a member and by a labor federation with which the national labor organization is affiliated. The Vacation Fund is a permissible source of voluntary contributions because it consists of funds earned by union members and does not include funds commingled with union treasury monies or funds required as a condition of employment or union membership.

The proposed deduction/authorization card is acceptable because it contains a clear statement informing contributors of the political purpose of the funds and assurances that the contribution guidelines are merely suggestions and the union will not penalize anyone because his/her contribution is too small or because he/she decides not to contribute at all. However, the form must be revised to indicate the contributor can contribute an amount other than that suggested by the authorization form.

The Commission noted that Commission Regulations governing joint fundraising and transfers of contributions between affiliated committees also apply to the solicitation program. 11 CFR

102.6, 102.8 and 103.3. (Date Issued: August 12, 1980; Length: 3 pages)

**AO 1980-75: National Trade Association's Solicitation of "Designated" Members**

The National Restaurant Association (NRA), a national trade association, must obtain written approval from its member corporations **before** soliciting contributions to its separate segregated fund from employees who have been designated by these corporations as individual NRA members.

Under NRA's membership policy, a member organization may designate its executive and administrative employees as individual members of NRA. The corporate member "transfers portions of its membership rights" to the individual it designates as a member. It may also pay the annual NRA dues of the designated member. While the individuals designated as NRA members are entitled to all the rights and benefits accorded to individuals who obtain membership by initiating their own application, the designated members enjoy these rights and benefits solely by virtue of their employers' membership in NRA. In effect, the designated member acts as a representative of his or her employer in the exercise of membership rights. NRA would, therefore, be precluded from soliciting these individuals without prior approval by their corporate employers. 11 CFR 114.8. By contrast, under 11 CFR 114.7, NRA could directly solicit noncorporate individual members who had independently applied for membership. Commissioner Joan D. Aikens and Chairman Max L. Friedersdorf filed a dissenting opinion. (Date Issued: August 18, 1980; Length: 8 pages, including dissenting opinion)

**AO 1980-76: Fees for Regular Radio and Television Appearances**

Fees received by Senator William Proxmire for regular appearances on a monthly radio program and a weekly television program do not count against his \$25,000 per year honorarium limit.

The fees are considered "stipends" under Commission Regulations — as distinct from "honoraria" — because they constitute "payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated." 11 CFR 110.12(c)(3).

The Commission expressed no opinion on the application of tax laws and Senate rules to the stipends. (Date Issued: August 1, 1980; Length: 2 pages)

**AO 1980-78: Use of Campaign Finance Information in Candidate's Solicitation Letter**

Using information obtained from disclosure reports filed with the FEC, Senate candidate Don L. Richardson may, in a solicitation letter, publish the total disbursements made by candidates in previous elections. Since the letter would not disclose the identity of contributors, use of this information would not be prohibited by 2 U.S.C. §438(a)(4) or 11 CFR 104.15. (Dated Issued: August 12, 1980; Length: 2 pages)

**AO 1980-79: Name of Independent Expenditure Committee Advocating Presidential Candidate's Defeat**

Mr. Brad Sherman may not use the name "Americans Against Reagan" for a proposed political committee which would be "totally independent of any other political committee, candidate or political party" and which would advocate the defeat of the Republican nominee in the general election. Under the Act and Commission Regulations, any political committee which is not authorized by a candidate may not include the name of any candidate in its title. 2 U.S.C. §432(e)(4) and 11 CFR 102.14(a). (Date Issued: August 1, 1980; Length: 2 pages)



**AO 1980-80: Separate Campaign Committees for Special and Primary Elections**

Mr. George W. Crockett may use the principal campaign committee established for his Congressional primary election to campaign in a special election held on the same date to fill the same Congressional seat. Since the two campaigns would be for different terms of the same office, Mr. Crockett would not be subject to 11 CFR 110.8(d)(1), which requires a candidate to designate separate campaign committees when running "for more than one Federal office." (Date Issued: July 11, 1980; Length: 2 pages)

**AO 1980-81: Application of 1980 Annual Limit to Individual's 1979 Contributions to Draft Committees**

Contributions amounting to \$12,000 made in 1979 to three "Draft Kennedy" committees by Mr. Mark B. Dayton count against his \$25,000 annual contribution limit for 1979 — not 1980. Mr. Dayton's contributions do not count against his 1980 contribution limit because they were not donated to a "single candidate" committee (i.e., a committee supporting Edward Kennedy only) or to committees authorized by Edward Kennedy; nor were they designated for a particular election. 11 CFR 110.5(b)(2). At the time Mr. Dayton made the contributions, Mr. Kennedy had not yet announced his candidacy for the Presidency or authorized any of the three draft committees.

The Commission noted that this opinion did not constitute a determination of when Mr. Kennedy became a Presidential candidate or whether the draft committees were affiliated or unaffiliated. (Date Issued: September 11, 1980; Length: 3 pages)

**AO 1980-83: Reporting by Inactive Presidential Committee**

The Crane for President Committee, Inc. (the Committee), the principal campaign committee of former Presidential candidate Philip Crane, must continue to file reports on a monthly basis during 1980. The Act and Commission Regu-

lations require monthly reporting during an election year for principal campaign committees of Presidential candidates that have received contributions or made expenditures aggregating \$100,000. Mr. Crane's committee has exceeded this threshold and, therefore, may not change to a quarterly reporting schedule even though Mr. Crane is no longer a candidate. 2 U.S.C. §434(a)(3)(A); 11 CFR 104.5(b). (Date Issued: September 10, 1980; Length: 2 pages)

**AO 1980-84: Continued Use of Authorized Committee's Former Title**

Congressman Richard C. White's authorized campaign committee (the Committee) must use its official title, the Richard C. White Congressional Club of the Permian Basin, on the Committee's statement of organization, on all reports filed by the Committee and on all authorization/nonauthorization notices required by 2 U.S.C. §441d. (The Committee had recently amended its former title, Congressional Club of the Permian Basin, to include the candidate's name, as required by 2 U.S.C. §432(e)(4) and 11 CFR 102.14(a).)

The Committee may, however, use stationery imprinted with its former title for mailings that solicit contributions or advocate his election, provided the Committee includes a statement giving its full official title and indicating it has authorized and paid for the mailing. 2 U.S.C. §441d (a)(1). When the old stationery is used for communications that do not require the authorization notice, the Committee's official title does not have to be included. Nor does the former title of the Committee's checking account have to be amended since the account is not subject to the authorization/nonauthorization notice required by 2 U.S.C. §441d. (Date Issued: August 28, 1980; Length: 2 pages)

**AO 1980-86: Abbreviated Title for Separate Segregated Fund**

The American Natural Resources, Inc. Political Action Committees (the Committees), the separate segregated funds of American Natural Resources, Inc., may not continue using the

abbreviated title "ANR" on Committee checks and letterhead. "ANR" is not an acceptable acronym because it is not a clearly recognized abbreviation by which the corporation is commonly known and it does not adequately inform the public that American Natural Resources, Inc. sponsors the Committees. 2 U.S.C. §432(e)(5); 11 CFR 102.14(c). (Date Issued: August 28, 1980; Length: 2 pages)

**AO 1980-87: Local Party Committee's Expenditures for Presidential Ticket**

The Pelham Republican Town Committee, a subordinate committee of the state party committee, may make expenditures for local newspaper and direct mail advertising which support the Republican Presidential ticket only if the Republican National Committee authorizes the subordinate committee as its designated agent. Moreover, these expenditures must be charged against the Republican National Committee's overall "coordinated party" expenditure limit for the Presidential ticket and must be reported by the national committee. 2 U.S.C. §§441a(d)(1) and (2); 11 CFR 110.7(a)(4), 109.1(d)(2) and 104.3(b)(1)(viii).

Commission Regulations prescribed after the enactment of the 1979 Amendments eliminated the special \$1,000 expenditure which a subordinate party committee could make on behalf of its party's Presidential nominee in the general election. Under current Regulations, subordinate party committees may, however, make other types of exempted expenditures that indirectly benefit the Presidential nominee. For example, a state or local party committee may pay for:

- **Certain campaign materials** (e.g., handbills, pins, bumper stickers, brochures) which are distributed by volunteers, provided the materials are not designed for general public political advertising and meet other conditions spelled out in Commission Regulations. See 11 CFR 100.7(b)(15) and 100.8(b)(16); and
- **Voter registration and get-out-the-vote activities**, provided specified conditions are met.

See 11 CFR 100.7(b)(17) and 100.8(b)(18). A local party committee is required to register as a "political committee" under the Act, however, when it spends more than \$5,000 a year for such exempted activities. (Date Issued: September 15, 1980; Length: 4 pages)

**AO 1980-88: Personal Services Donated to Presidential Campaign Committee**

Bookkeeping services donated by an individual to the Citizens for Election of Harry Davis as President Committee would not be considered a contribution under the Act; nor would the services be reportable. 2 U.S.C. §§431(8)(B)(i) and 431(8)(A)(i). The individual would not, therefore, have violated the Act's contribution limits when the value of the uncompensated services exceeded \$1,000. (Date Issued: September 16, 1980; Length: 2 pages)

**AO 1980-89: Donation of Food and Beverage to Congressman's District Office Reception**

Food and beverage donated by corporations, partnerships, sole proprietorships and individuals to receptions hosted by Congressman Tony Coelho at his district offices would not constitute "contributions" or "expenditures" under the Act.

The receptions will be held for members of an Arts Committee (and other interested parties) who advise Congressman Coelho on federal legislation related to the arts. Since the purpose of the receptions is to help Congressman Coelho carry out his duties as a federal officeholder, and not to support his reelection campaign, donations to the receptions would not be subject to the Act's limits and prohibitions on contributions or reporting requirements. 2 U.S.C. §§431(8) and (9), 441b.

Such donations could, however, result in prohibited contributions from corporations or in-kind contributions from individuals, sole proprietorships and partnerships if:

1. Any communication made in connection with

the receptions expressly advocated the election or defeat of Congressman Coelho or any other candidate for federal office; or

2. Contributions were solicited, made or accepted for Congressman Coelho's campaign.

This opinion supersedes those portions of AO 1975-14 and OC 1975-125 that held that donations received and spent by federal officeholders to defray expenses related to their office are reportable contributions and expenditures.

The Commission expressed no opinion on the application of Rules of the U.S. House of Representatives or of the Internal Revenue Code to the donations. (Date Issued: September 5, 1980; Length: 3 pages)

**AO 1980-90: Public Affairs Program Produced and Distributed by Corporation**

The Public Affairs Division of the Atlantic Richfield Company (the Company) may **not** produce a videotape of interviews with the major Presidential candidates on energy-related topics for use on commercial and cable television because the communication would result in a prohibited in-kind contribution to each of the candidates. Commission Regulations permit corporations to distribute nonpartisan communications to the general public only if the communications:

1. Do not favor one candidate or political party over another; and
2. Are obtained from a civic or other nonprofit organization which does not endorse or support, or is not affiliated with, any candidate or political party. 11 CFR 114.4(c)(3).

Although nonpartisan in nature, the proposed videotape would still result in a prohibited in-kind contribution to each of the participating candidates since it was prepared by the Company — not a civic or other nonprofit organization. Nor would the program be considered a news story exempt from the Act's definition of expenditure since that exemption applies only to election-related news stories, commentaries and editorials sponsored by broadcasters,

newspapers or other public media. 2 U.S.C. §431(1)(B)(i). Chairman Max L. Friedersdorf and Commissioner Joan D. Aikens filed a dissenting opinion. (Date Issued: September 9, 1980; Length: 5 pages, including dissenting opinion)

**AO 1980-92: Corporate Contributions to Nonpartisan Organization's Voter Registration Drives**

The Voter Registration Program (VRP), a nonprofit, nonpartisan corporation whose sole purpose is to sponsor voter registration drives, may accept donations to support its voter registration drives from corporations, foundations and other entities if, in connection with its efforts to register voters in California, it has not, does not and will not endorse, support or oppose candidates for political office or political parties. 11 CFR 114.4(d)(2). (Date Issued: September 11, 1980; Length: 3 pages)

**AO 1980-93: Coin as Campaign Item**

Richard Bozzuto, a Senate candidate from Connecticut, may distribute a United States penny as a campaign item. All costs related to the distribution must be reported pursuant to 2 U.S.C. §434. The Commission expressed no opinion on the possible application of other federal statutes to the item. (Date Issued: September 10, 1980; Length: 2 pages)

**AO 1980-94: Essay Contest Sponsored by Congressman's Campaign Committee**

The Whitehurst for Congress Committee may pay all costs of sponsoring an essay contest for high school students in Mr. Whitehurst's Congressional district, as long as these costs are reported pursuant to 2 U.S.C. §434. (Date Issued: September 19, 1980; Length: 2 pages)

**AO 1980-95: National Bank's Contribution to State Political Fund**

The First National Bank of Florida (the Bank) may make a contribution to "5 for Florida's Future," a fund whose express purpose is to

promote adoption of five amendments to Florida's Constitution. Although the state's referendum on the ballot issues will be held in conjunction with a primary run-off election, the bank's contribution does not fall within the purview of the Act because the contribution will be used to influence a ballot referendum — not the election of any candidate for public office. The Commission noted that the Supreme Court examined virtually the same issue in *The First National Bank of Boston et al. v. Bellotti*. (Date Issued: September 19, 1980; Length: 3 pages)

**AO 1980-96: Post-Election Public Funding for New Party Presidential Candidate**

John B. Anderson will not be excluded from receiving post-election public funding as the Presidential candidate of a new party, provided:

1. Mr. Anderson receives five percent or more of the total popular votes cast in the 1980 Presidential general election (including votes cast for him as an independent candidate); and
2. Mr. Anderson satisfies all other eligibility requirements for public funding stipulated in the Presidential Election Campaign Fund Act.

Mr. Anderson will not be excluded from receiving post-election public funding because his campaign efforts for the Presidency have qualified him as a "candidate," and the various organizations supporting him have qualified as newly established "political parties" for purposes of the Presidential Election Campaign Fund Act and relevant Commission Regulations.

Mr. Anderson qualifies as a "candidate" under the Presidential Election Campaign Fund Act because he is presently certified to be on the ballot (or has met all requirements for ballot access) in 10 or more states as either an independent candidate or the candidate of a political party. <sup>2</sup> 26 U.S.C. §9002(2)(B).

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<sup>2</sup>In AO 1980-56, the Commission concluded that a new party candidate would be eligible to receive post-election public funding based on all the popular votes received by the candidate in

A number of the organizations supporting Mr. Anderson's candidacy qualify as "political parties" because they meet the three criteria established in Commission Regulations for a "political party." Specifically, each of these political organizations constitutes: "1) an association, committee, or organization 2) which nominates or selects an individual for election to any federal office, including the office of President or Vice President of the U.S. 3) whose name appears on the general election ballot as the candidate of such association, committee or organization" (numbers added for emphasis). 11 CFR 9002.15.

The National Unity Campaign, headquartered in Washington, D.C., and various state organizations supporting Mr. Anderson satisfy the second criteria of a political party, i.e., that of "nominating" or "selecting" a candidate, because they have met the requirements in their respective states for obtaining ballot access for a candidate. In some states, the Anderson organizations have conducted successful petition drives while in other states the organizations have obtained ballot access by holding caucuses to select delegates to state conventions which, in turn, have selected Mr. Anderson as their Presidential candidate.

The organizations which have nominated Mr. Anderson will fulfill the third criteria of "political party" when the FEC receives verification from appropriate state election officials that Mr. Anderson will appear on the ballot in their respective states as the candidate of one of these organizations.

The Commission did not decide whether the National Unity Campaign or any of the other organizations which have nominated Mr. Anderson constitute a "national committee of a political party" as defined by 2 U.S.C. §431(14). Vice Chairman John Warren McGarry

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the 1980 Presidential general election, including those votes cast for the candidate as an independent candidate.

filed a dissenting opinion. Commissioners Frank P. Reiche and Robert O. Tiernan filed concurring opinions. (Date Issued: September 4, 1980; Length: 21 pages, including dissenting and concurring opinions)

**AO 1980-97: Trust for Pre-Election  
Presidential Transition Activities**

The Presidential Transition Trust (the Trust), a group established to undertake certain transition activities on behalf of a potential new Republican administration prior to the November 4 election, will not constitute a "political committee" under the Act, provided the Trust:

1. Does not assist the Reagan-Bush Committee in any of its campaign activities; and
2. Does not use its assets to further the election of the Republican Presidential ticket.

Donations to, or disbursements by, the Trust would not be considered "contributions" or "expenditures" under the Act.

As an organization totally separate from the Reagan-Bush Committee, the Trust plans only to conduct transition activities, such as gathering information about critical jobs in a possible new administration and identifying personnel qualified to fill those positions. Donors to the Trust will be asked to sign a card affirming that their donations are given for the purpose of funding pre-election transition activities and not for influencing federal elections. Donations will be limited to \$5,000 per individual. In addition, The Trust will not accept donations from corporations, national banks or labor organizations.

The Commission expressed no opinion on the application of the Presidential Transition Act of 1963 to the Trust's activities since that statute is outside its jurisdiction. (Date Issued: September 15, 1980; Length: 4 pages)

**AO 1980-98: Title/Solicitation Activities  
of Separate Segregated Fund**

The Birmingham Trust National Bank Committee for Good Government (the Committee) is an acceptable title for the separate segregated

fund of the Birmingham Trust National Bank (the Bank) because it includes the sponsoring organization's full name. 2 U.S.C. §432(e)(5); 11 CFR 102.14(c). (To comply with 1979 Amendments to the Act, the Committee had changed its title from the Southern Committee for Good Government to its current title.) The Committee's title does not have to include the names of the Bank's corporate affiliates whose executive and administrative personnel the Committee also solicits.

The Committee's new abbreviated title, BTNB Committee for Good Government, is not permissible, however, because "BTNB" is not a clearly recognizable abbreviation. 11 CFR 102.14(c).

The Commission noted that the Advisory Opinion Request had suggested that the Committee does not restrict solicitations to shareholders and executive and administrative personnel of the Bank and its affiliates. While the Bank or the Committee may solicit the executive and administrative personnel of the Bank's subsidiaries, branches, divisions and affiliates and their families at any time, it may solicit other employees only twice a year according to special procedures described in 11 CFR 114.6(1). (Date Issued: September 26, 1980; Length: 3 pages)

**AO 1980-99: Accounting Methods for  
Contributions Under \$50**

When the Republican Roundup Committee (the Committee), a registered political committee, hosts fundraising events, it must keep records of all contributions, including those under \$50. 2 U.S.C. §432(c)(1). While neither the Act nor the Commission's Regulations specify the details for keeping records of contributions under \$50, the Regulations state that "an account [of all contributions received] shall be kept by any reasonable accounting procedure." 11 CFR 102.9(a).

The Commission recommended two alternative accounting methods for keeping the records of small contributions:

1. The Committee may keep the same records of contributions under \$50 that it must keep for contributions of \$50 or more, i.e., the name and address of each contributor and the date and amount of the contribution. If the Committee uses this method, or otherwise retains information on the names of contributors, it should also track the amount donated by each contributor on a calendar year basis so it can comply with the requirements for recording aggregated contributions. 11 CFR 102.9(a)(2).
2. Alternatively, the Committee may record the name of the fundraising event, the dates the contributions were received for the event, and the total amount of contributions received on each day for the event. Using this method, the Committee must nevertheless keep more complete records for contributions aggregating \$50 or more (see above). (Date Issued: September 26, 1980; Length: 2 pages)

**AO 1980-100: Separate Segregated Fund  
Established by Corporation  
Wholly Owned by Foreign  
Nationals**

The Revere Sugar Corporation (Revere), a corporation wholly owned by foreign nationals, may pay costs of establishing, administering and soliciting contributions to a separate segregated fund (the Committee). Revere's sponsorship of the Committee will not result in (prohibited) contributions by foreign nationals. Revere itself is not a "foreign principal" — hence not a "foreign national" — because it is a domestic corporation whose principal place of business is in the United States. (See 22 U.S.C. §611(b).) Moreover, no foreign nationals will exercise decision-making authority over the Committee's activities and no contributions will be solicited or accepted from foreign nationals.

The Commission noted that it has authority to audit the Committee's activities. Commissioner Thomas E. Harris filed a dissenting opinion. (Date Issued: September 19, 1980; Length: 4 pages, including dissenting opinion)

**AO 1980-101: Commercial Use of Campaign  
Finance Information**

Except for information identifying individual contributors, Marwin I. Weinburger may use any information copied from FEC documents and reports filed with the Commission in a directory of political action committees, which he plans to publish and sell.

Although the Act and Commission Regulations generally prohibit commercial use of information copied from FEC reports, Section 104.15(c) of the Regulations does allow this information to be used in newspapers, magazines, books and other similar communications. The communications, however, may not use any FEC information on individual contributors. (Date Issued: September 26, 1980; Length: 3 pages)

**AO 1980-102: Definition of Immediate Family  
for Solicitation Purposes**

The Fru-Con Corporation Political Action Committee, the separate segregated fund of the Fru-Con Corporation, may solicit contributions from the immediate family of Fru-Con's executive and administrative personnel. For these purposes, "immediate family" includes the children and parents who live in the household with the corporate personnel. The Committee may not, therefore, solicit members of the immediate family living outside the home. 2 U.S.C. §441b(b)(4)(A); 11 CFR 114.5(g)(1). (Date Issued: October 1, 1980; Length: 3 pages)

**AO 1980-103: State Party's Distribution  
of Tax Checkoff Funds  
to Federal Candidates**

Since the North Carolina State Democratic Executive Committee (the State Party), a multicandidate committee, exercises control over funds which are accumulated through a state tax checkoff and distributed to Democratic Congressional candidates, the funds would constitute contributions from the State Party. They are subject to the \$5,000 per candidate, per election, contribution limit.

The source of the funds is the North Carolina Election Campaign Fund, provided for by state law and funded by individuals who check off a dollar from their taxes on their state income tax forms. The state law does not, however, specify a formula for distributing the funds to eligible candidates. This decision is made by a committee comprised of the State Party chairman, Party treasurer and the eligible candidates. The State Party would therefore exercise control over allocating the funds, rather than simply acting as a distribution agent or conduit. (Date Issued: October 10, 1980; Length: 3 pages)

**AO 1980-105: Notices Required  
for Advocacy Literature**

The Pro-Life Action Council (the Council) must include a notice of nonauthorization on any general public political communication which the Council finances if the communication expressly advocates the election or defeat of a clearly identified candidate for federal office. If the communication is issued without a candidate's authorization, the notice must clearly identify the Council as the organization which has "... paid for the communication and state that the communication is not authorized by any candidate or candidate's committee." 2 U.S.C. § 441d(a)(3); 11 CFR 110.11(a)(1)(iii). (Date Issued: October 6, 1980; Length: 2 pages)

**AO 1980-106: Summary of Presidential  
Candidates' Positions on  
Public Issues Published by  
Unincorporated Association**

Payments made by FaithAmerica, an unincorporated association of Christian laymen, to publish and distribute a proposed brochure summarizing Presidential candidates' views would constitute "expenditures" made for the purpose of influencing a federal election. The payments would be considered "expenditures" because the information, and the manner in which it was to be presented, were designed to influence the reader's choice in the 1980 Presidential election rather than to promote discussion of public issues. The publication listed the position of

each Presidential candidate, pro or con, on issues of concern to Christian clergy and laymen. Moreover, FaithAmerica planned to distribute the publication close to the time of the Presidential election. If the expenditures for the proposed publication exceeded \$1,000 during 1980, FaithAmerica would have to register and report as a political committee. 2 U.S.C. § 431, 433 and 434. (Date Issued: December 23, 1980; Length: 4 pages)

**AO 1980-107: Volunteer Services Provided  
by Senior Partner of Law Firm**

A senior partner may provide free services to the Reagan-Bush Committee during normal working hours while continuing to receive full compensation from his law firm. 2 U.S.C. § 431(8)(A). The compensation will not count as an in-kind contribution from the firm to the Committee because the partner's compensation is not determined by the number of hours worked and the partner has complete discretion in the use of his time, provided he does not engage in other business activities. Rather, his income is based on his proprietary or ownership interest in the firm reflecting, for example, his ability to attract clients, solve problems and counsel others. Commissioner Frank P. Reiche filed a dissenting opinion. (Date Issued: October 6, 1980; Length: 5 pages, including dissenting opinion)

**AO 1980-108: Bank Loans Made to New Party  
Presidential Candidate**

Loans made by a consortium of banks to the National Unity Campaign, the principal campaign committee of Presidential candidate John B. Anderson, could be treated as bona fide loans, rather than as prohibited contributions, even though they would be secured by Mr. Anderson's expectation of receiving post-election public funding. (To be eligible for post-election public funding as a new party candidate, Mr. Anderson must receive five percent or more of the total votes cast in the general election.)

More specifically, the loans would not necessarily fall outside the "ordinary course of

business" solely because the principal means of repayment would be the post-election federal funds available to Mr. Anderson if he receives at least five percent of the popular vote. Furthermore, the loans would not violate the Act's requirement that bank loans be "made on a basis which assures repayment" solely because Mr. Anderson's receipt of post-election financing is contingent on his obtaining five percent or more of the vote. The Commission noted that the risk of the candidate's failure to repay the loans was mitigated by a proposed Revolving Credit Agreement, which included the following risk-control mechanisms:

1. Under the "available commitments formula," the amount of funds available to the Anderson campaign on any given day would depend on Mr. Anderson's performance in the most recent opinion polls.
2. Total loans available to the Anderson campaign would not exceed \$10 million.
3. All loans would have to be used solely to defray qualified campaign expenses.
4. In order to borrow at all, Mr. Anderson would have to be favored in the polls by no less than six percent of the voters.
5. A series of dollar limits and time restraints would be set on all loan transactions. The Agreement specifies, for example, that the Anderson campaign may not borrow additional funds within 10 days of the preceding borrowing or borrow more than a total of \$6 million within 20 days of the Agreement.
6. Mr. Anderson would assign his rights to post-election funds to his principal campaign committee, which in turn would assign those rights to an agent representing the banks. Further, the Anderson campaign would irrevocably authorize the Commission to have all public funds paid directly to the agent.
7. Numerous provisions of the Agreement would safeguard the banks' first-priority security interest in any post-election public funds Mr. Anderson might receive.
8. The Anderson campaign would remain liable for the debt even if Mr. Anderson failed to receive post-election public funding.

The Commission expressly did not decide, however, whether any particular loan made pursuant to the Agreement would be considered a loan negotiated in the "ordinary course of business," because this decision would depend on many other factors involved in the particular loan transaction. The Commission therefore cautioned against any use of the opinion as a legal sanction for any particular loan transaction. Further, the Commission expressed no opinion on the application of other laws and regulations to the loans, including tax laws or state and federal banking laws. Vice Chairman John Warren McGarry and Commissioner Thomas E. Harris issued a concurring opinion. Commissioner Robert O. Tiernan issued a dissenting opinion. (Date Issued: October 6, 1980; Length: 17 pages, including concurring and dissenting opinions)

#### **AO 1980-109: Candidate Support Provided by Subscription Periodical**

Endorsement of candidates for federal office by *The Ruff Times* (a subscription periodical), including solicitations to their campaigns, would not constitute contributions to the candidates by Mr. Ruff, *The Ruff Times* or the subscription periodical's publisher. If a commentary in the periodical did solicit contributions to a candidate, the contributors would have to be instructed to forward their contributions **directly** to the candidate's campaign committee — and not to *The Ruff Times*. Nor would campaign advertising prepared and paid for by a candidate's committee and published in the periodical result in a contribution to the candidate, provided the candidate's campaign committee paid the usual and normal rate for the advertisements.

Commentaries in *The Ruff Times* endorsing specific candidates would not constitute contributions because Section 100.7(b)(2) of Commission Regulations specifically exempts from the definition of contribution "any cost incurred in covering or carrying a news story, commentary, or editorial by a . . . periodical publication." Further, "periodical publication" has



been defined to mean a publication in bound pamphlet form appearing at regular intervals and containing articles of news, information, opinion or entertainment, whether of general or specialized interest, which ordinarily derives its revenue from subscriptions and advertising. (Date Issued: October 6, 1980; Length: 4 pages)

**AO 1980-110: Local Party Organization's Status as a Political Committee**

The local Greenburgh Democratic Campaign Committee (the local committee) may use \$2,250 in contributions, which it had received from two candidates for state office, a Congressional candidate and two local political committees, to rent a campaign headquarters and provide phone services, volunteer activities and mailings for the three candidates. The local committee would not become a political committee subject to the Act's registration and reporting requirements provided:

1. Total costs incurred by the local committee for activities exempted from the Act's definition of "contribution" and "expenditure" did not exceed \$5,000;
2. The cost of the phone services benefitting the Congressional candidate did not exceed \$1,000; and
3. The local committee made no other "expenditures" or "contributions" on behalf of the Congressional candidate.

Although the Act specifically exempts from the definition of "contribution" and "expenditure" payments for slate cards and campaign materials used in connection with volunteer activities (e.g., campaign pins, bumper stickers and handbills), the local committee would have to register and report as a political committee if such costs exceeded \$5,000. The costs of phone services provided on behalf of the Congressional and local candidates would, however, be considered in-kind contributions to each candidate in proportion to the benefit each candidate reasonably expected to derive from the services. 11 CFR 106.1. Therefore, if the amount attributable to the Congressional candidate exceeded \$1,000, the local committee would be

required to register and report as a political committee. (Date Issued: October 10, 1980; Length: 4 pages)

**AO 1980-111: Separate Segregated Fund Established by Trade Association With Dues-Paying Foreign Members**

The Portland Cement Association (the Association), a trade association whose members include dues-paying foreign corporations, may pay the costs of establishing, administering and soliciting contributions to a separate segregated fund (the fund). Moreover, contributions made by the fund will not violate the Act's prohibition on contributions by foreign nationals. 2 U.S.C. §441e.

The Association's payments for establishing and administering the fund would be permissible because:

1. The Association itself is not a "foreign national" or a "foreign principal" but a discrete corporation organized under United States laws with its principal place of business in the United States; and
2. The Association will not allow foreign nationals to exercise decision-making authority over the fund's activities.

Contributions made by the fund would be lawful because the Association does not plan to solicit or accept contributions from foreign nationals.

The Commission noted that it had authority to audit the fund's activities, including its decision-making processes. 2 U.S.C. §§437d and 438. Commissioner Thomas E. Harris filed a dissenting opinion. (Date Issued: October 16, 1980; Length: 3 pages, including dissenting opinion)

**AO 1980-113: Disposition of Excess Campaign Funds**

The Zell Miller for U.S. Senate Committee (the Committee) may use its excess campaign funds to:

1. Establish campaign funds for any of Mr.

Miller's future campaigns for federal, state or local office;

2. Reimburse Mr. Miller's state campaign for funds it transferred to the Committee; and
3. Establish a fund for official state duties Mr. Miller will carry out as lieutenant governor.

If excess funds may be used for these purposes under Georgia law, they may be similarly used under the Act and Commission Regulations provided:

1. Excess funds transferred to future campaigns for federal office are lawful under the Act (11 CFR 110.3(a)(2) (iv)); and
2. Excess funds transferred to either Mr. Miller's state campaign or to any future campaigns are used for campaign purposes. 11 CFR 113.2.

The Committee may not, however, use the excess funds to establish a travel fund to be used by Mr. Miller's wife when she accompanies him on official duties because no specific information suggests her trips would serve an official purpose. The travel fund would therefore constitute a "personal use" of the excess funds, which is prohibited by 2 U.S.C. §439a and 11 CFR 113.2. (Note: As amended in 1979, the Act provides that excess campaign funds may not be converted to personal use, unless the candidate was a member of Congress on January 8, 1980. Mr. Miller was not.)

The Commission expressed no opinion on the application of federal tax laws to the use of excess campaign funds since those laws are not within its jurisdiction. (Date Issued: November 7, 1980; Length: 3 pages)

#### **AO 1980-114: Disposition of Refunds Made to Terminated Campaign Committee**

Telephone refunds received by the terminated Calabrese for Congress Committee (the Committee) may be transferred to Mr. Calabrese as partial repayment for loans he had previously made to the Committee. The refunds are not considered "excess campaign funds" — and, therefore, not a prohibited transfer of excess

campaign funds for personal use — because Mr. Calabrese originally made a loan to the Committee rather than a gift. The loan was consistently reported as a loan until the Committee decided to terminate. Under these circumstances, the telephone refund does not constitute "excess campaign funds" — i.e., funds "in excess of any amount necessary to defray . . . expenditures."

The Committee must report receipt of the refunds from the Ohio Bell Telephone Company, and their payment to Mr. Calabrese, in an amended termination report pursuant to 2 U.S.C. §434 and 11 CFR 104. (See also AO 1979-5.) (Date Issued: November 7, 1980; Length: 2 pages)

#### **AO 1980-115: Law Firm's Compensation to Partner Campaigning for Congress**

To avoid making a contribution to Mr. Pierce O'Donnell's Congressional campaign, his law firm must either:

1. Reduce Mr. O'Donnell's share of partnership profits to reflect actual hours billed to his clients; or
2. Indicate that Mr. O'Donnell's value to the firm throughout the year increased, offsetting the reduction in Mr. O'Donnell's "client billable hours."

In the absence of any indication that Mr. O'Donnell's value to the firm had increased, any compensation to Mr. O'Donnell in excess of the actual hours he worked for the firm would be considered a contribution to his campaign because compensation to partners is based, in part, on the number of hours they bill to clients. The Commission distinguished this situation from that presented in Advisory Opinion 1979-58, where full compensation to a senior partner was not considered to be an in-kind contribution from his firm because, in that firm, compensation was based solely on the partner's proprietary interest in the firm and not on the amount of time spent on firm matters. Commissioner Frank P. Reiche filed a concurring

opinion. (Date Issued: October 14, 1980; Length: 7 pages, including concurring opinion)

**AO 1980-116: Independent Political  
Committee Aided by Paid  
Presidential Campaign Worker**

If a person who is paid to make speeches on behalf of a Presidential committee assists Americans for a Responsible Presidency (ARP), an independent political committee, ARP may not make independent expenditures either for the Presidential candidate or against his opponents, regardless of whether:

1. ARP reimburses the campaign worker for making the speeches;
2. The campaign worker has any express or implied authority to make or direct expenditures by the Presidential candidate's authorized committees; or
3. The campaign worker has consulted with the Presidential candidate on campaign strategy.

ARP is precluded from making the independent expenditures because Commission Regulations presume an expenditure is not "independent" if it has been made by or through any "... person who is, or has been receiving... compensation or reimbursement from the candidate." 11 CFR 109.1(a) and 109.1(b)(4)(i). (Date Issued: November 14, 1980; Length: 4 pages)

**AO 1980-117: Conversion of State Committee  
to Principal Campaign  
Committee of Federal Candidate**

The Concerned Citizens for Kleczka (the Committee), Mr. Gerald Kleczka's state campaign committee, may register and report as his principal campaign committee for federal office, even though the treasury of the state committee contains some contributions that are not permissible under the Act. The newly registered federal committee must, however, handle its cash-on-hand (i.e., funds left over from the state committee) in the following way:

1. The Committee must exclude from cash-on-hand any contributions not permissible under the Act. This means the Committee may not keep or use funds donated by a separate

segregated fund that received contributions through a reverse checkoff system. 11 CFR 104.12.

2. On its first report, the Committee must disclose the source of all cash-on-hand on the basis of last in, first "on hand." Mr. Kleczka's cash-on-hand may only include those permissible contributions most recently received by the state committee prior to its registration as a federal committee. 11 CFR 104.12. (Date Issued: November 7, 1980; Length: 3 pages)

**AO 1980-118: Solicitation of Stockholders  
Who Granted Limited,  
Irrevocable Proxies**

The Exchange Community Action II Political Action Committee, the separate segregated fund of the Exchange International Corporation (EIC), may solicit without limit EIC stockholders even though they have granted certain irrevocable, limited proxies to another individual.

Commission Regulations define as a solicitable stockholder "... a person who has a vested beneficial interest in stock, **has the power to direct how that stock shall be voted, if it is voting stock**; and has the right to receive dividends." (emphasis added) 11 CFR 114.1(h). Assuming the EIC stockholders meet the other requirements of 11 CFR 114.1(h), they are solicitable stockholders because they have retained their right to vote on all but two stockholder matters. The two matters specifically delegated to the proxy holder for a four-year period are: the right to vote on procedural matters submitted for a stockholder vote at annual stockholder meetings and the right to vote for the election or removal of members of EIC's Board of Directors. Commissioners Thomas E. Harris and Robert O. Tiernan filed a dissenting opinion. (Date Issued: December 4, 1980; Length: 5 pages, including dissenting opinion)

**AO 1980-119: Allocation of Coordinated  
Party Expenditures for  
Television Ads**

The National Republican Senatorial Committee (the Committee), which was designated as an agent by the Republican National Committee to make coordinated party expenditures for several Senatorial candidates, must attribute the full amount of such expenditures to the spending limits stipulated by 2 U.S.C. §441a(d)(3).

In making the coordinated party expenditures, the Committee planned to purchase television time in certain markets that would result in broadcasting a political ad in several states. The ad would advocate the election of a single Senatorial candidate in one state; none of the content would be directed to a race in another state reached by the broadcast.

In calculating the amount of coordinated party expenditures, the Committee must count the total costs for the advertising, rather than only that portion of the costs corresponding to the proportion of the total viewing audience that lives in the candidate's state. Calculating coordinated party expenditures on the basis of "political effectiveness" is not permissible because:

1. The Act and Regulations do not provide for such a calculation; and
2. Section 106.2(c) of the Commission's regulations does not apply to this case. This regulation applies only to expenditures by Presidential primary candidates. (Date Issued: October 24, 1980; Length: 4 pages)

**AO 1980-120: Convention Expenses Defrayed  
by Host Committee with Funds  
Transferred from General to  
Separate Account**

The Republican National Convention, Inc. (the Host Committee) may pay certain convention expenses of the Republican National Committee with funds it transfers from its general account to a separate account that it maintains specifically to defray convention expenses. The Host Committee may transfer the funds because,

when the funds were first received, they would have qualified for deposit in the separate account: i.e., they consisted solely of donations from local retailers that were made in amounts proportional to the commercial return the retailers had reasonably expected to derive from the convention. 11 CFR 9008.7(d)(3)(ii). (Date Issued: November 14, 1980; Length: 3 pages)

**AO 1980-121: Qualifying as the National  
Committee of a Political Party**

The Socialist National Committee (the Committee) qualifies as the national committee of the Socialist Party, U.S.A. (the Party) because documentation it submitted to the Commission indicates that it has engaged in sufficient activity on the national level to satisfy the requirements for "national committee" status. 2 U.S.C. §431(14). Specifically, documentation provided by the Committee indicates:

1. The Committee has established a national office to administer the affairs of the Party.
2. The Committee is the "governing body" of the Socialist Party (a "political party" under the Act by virtue of having nominated several Presidential candidates that have appeared on state ballots as the Party's candidates) (2 U.S.C. §431(16));
3. The Committee has state and local Party affiliates;
4. The Party conducts biennial national conventions to determine policy and a national platform, elect Party officers and nominate its Presidential candidate;
5. The Party maintains a speakers bureau, disseminates information to the public and maintains communication within the Party through its publications.

As the national committee of the Party, the Committee may:

1. Receive contributions of up to \$20,000 per year from individuals (2 U.S.C. §441a); and
2. Make limited coordinated (§441a(d)) party expenditures on behalf of the Party's nominees for Federal office.

The Commission did not express an opinion, however, on the applicability of public funding provisions of the Act (i.e., primary election and convention funding) to possible activities by the Party and its potential Presidential candidates since the Committee did not present any specific transaction or activity related to these provisions of the Act. (Date Issued: December 4, 1980; Length: 3 pages)

**AO 1980-122: General Election Contributions  
Used to Retire Primary Debts**

New Yorkers for Myerson, Inc. (the Committee), the principal campaign committee of Bess Myerson's campaign for the U.S. Senate, may not use contributions earmarked for the general election campaign to retire debts of her primary campaign. Miss Myerson was a candidate only in the primary, and all the Committee's debts and obligations were incurred for that election. Since the contributions earmarked for the general election were from individuals who had already contributed up to \$1,000 to Miss Myerson's primary campaign, use of these contributions to retire primary debts would cause the contributors to exceed their primary election limits (\$1,000 per donor). 2 U.S.C. §441a(a)(1)(A). The Committee must, therefore, return these earmarked contributions to the contributors to avoid receipt of contributions in excess of the limits. (Date Issued: December 22, 1980; Length: 3 pages)

**AO 1980-123: Use of Excess Campaign Funds  
for Christmas Thank-You Notes**

Selden for Senate (the Committee) may pay the costs of Christmas thank-you notes it sends to campaign staff. If the Committee does not file a termination report before sending the notes, costs associated with the mailing would be considered reportable expenditures. 2 U.S.C. §434(b); 11 CFR 104.3(b). If the Committee files a termination report before mailing the notes, costs of the mailing would constitute a use of excess campaign funds. The use, however, would not be considered a personal use, which is prohibited under the Act, because the mailing is sufficiently campaign-related, i.e., the

direct consequence of ending a campaign. In the absence of any State law to the contrary, using funds for thank-you notes to staff would constitute the spending of excess funds for a "lawful purpose" under the Act.

The Commission expressed no opinion on the possible application of tax provisions, which are not within the Commission's jurisdiction. (Date Issued: November 21, 1980; Length: 2 pages)

**AO 1980-125: Receipt, Use and Reportable  
Value of \$100-Contribution  
Made in Silver Dollars**

The reportable value of 100 silver dollars received by the Cogswell for Senate Committee '80 (the Committee) depends on whether the Committee treats the coins as currency (i.e., as a \$100 cash contribution) or as a commodity to be liquidated or bartered (i.e., as an in-kind contribution). If the Committee treats the coins as currency, it must deposit them in its bank account and report them as a direct contribution of \$100.

Alternatively, if the Committee treats the coins as a commodity by negotiating a campaign worker's salary in silver coins, the value of the contribution is determined by the fair market value of the coins on the day the Committee received them. 11 CFR 104.13(b). (The fair market value is based on prices established for silver coins by the silver commodities market.) If, however, the fair market value of the coins is greater than \$1,000, the in-kind contribution is in excess of the contribution limits. 2 U.S.C. §441a(a)(11). If this occurs, the Committee must return that portion of the contribution that is in excess of the limits. (Date Issued: November 21, 1980; Length: 4 pages)

**AO 1980-126: Political Committee Status  
of Get-Out-The-Vote Activity**

Independent Voters for a Republican Victory (Independent Voters), a political organization established by Mr. Warren Lewis, is a "political committee" under the Act even though Mr. Lewis alone was responsible for the committee's

activity and decisions (i.e., establishing a bank account in the organization's name, soliciting contributions, preparing and distributing a brochure urging independent voters to vote for Republican candidates in the 1980 general elections). 2 U.S.C. §431(4)(a); 11 CFR 100.5(a). As such, Independent Voters is subject to all applicable provisions of the Act, including the registration and reporting requirements of 2 U.S.C. §§433 and 434.

Mr. Lewis and the contributors to Independent Voters constitute a political committee because they comprise "... a group of persons ..." that received or spent more than \$1,000 to influence a federal election. 2 U.S.C. §431(4) (A). Also relevant are the facts that Mr. Lewis:

1. Established an organizational identity (all contributions were solicited to, and deposited in a bank account established in the name of, Independent Voters); and
2. Reached beyond his personal funds to involve numerous people in the same activity by soliciting contributions from a broad range of persons across the country. Moreover, these contributors divested themselves of any control over how the organization's funds were spent. (Date Issued: December 22, 1980; Length: 3 pages)

**AO 1980-127: Conversion of Federal Committee to Federal/Nonfederal Committees**

The Democratic Party of South Carolina (the Party Committee), a registered political committee with a combined federal/nonfederal account, may establish a separate account for state and local elections while continuing to use the registered account exclusively for federal elections, provided:

1. The Party Committee properly allocates outstanding debts between the federal and nonfederal accounts and keeps sufficient documentation to support the reasonableness of that allocation (11 CFR 106.1); and
2. The Party Committee's federal account reports the change in accounts as an amendment to its Statement of Organization (Form

1) and discloses the allocation of debts on its next required report (Form 3X). The federal account may not terminate its reporting obligations until its portion of the total debt has been liquidated. 11 CFR 102.3 and 102.4.

The Commission did not approve any specific method for allocating outstanding debts. (Date Issued: December 4, 1980; Length: 3 pages)

**AO 1980-129: Corporation Established Pursuant to the Alaska Native Claims Settlement Act**

Although the Sealaska Corporation (Sealaska) is incorporated under Alaska law, it is considered a corporation organized by authority of a law of Congress and is therefore prohibited from making contributions or expenditures in connection with any election to any political office (local, state or federal). Sealaska qualifies as a corporation organized by authority of Congress because it is incorporated pursuant to the Alaska Native Claims Settlement Act (Claims Act), an act of Congress. More specifically, the Claims Act:

1. Provides for the establishment of corporations, such as Sealaska, and requires that their articles of incorporation be consistent with the Claims Act; and
2. Regulates Sealaska's bylaws, board of directors, issuance of stock, as well as the voting rights of its stockholders and its distribution of profits. (Date Issued: December 5, 1980; Length: 3 pages)

**AO 1980-130: Nonfederal Committee's Loan Repayment to Federal Committee**

The Garcia for Assembly Committee (the Garcia Committee), a nonfederal committee, may repay a \$5,000 loan obtained from the Fazio for Congress Campaign Committee (the Fazio Committee), a political committee registered under the Act. The Garcia Committee may make the repayment from an account that contains contributions from corporations and labor unions, as long as it:

1. Repays the loan (and interest, if any) from funds permissible under the Act;
2. Can demonstrate, through a reasonable accounting method, that sufficient funds to pay the loan have been received from permissible sources and such funds are present in the Committee's account; and
3. Keeps records of funds received and expended and, upon request, makes such records available for FEC examination. 11 CFR 102.5(b)(1)(ii).

Because the loan repayment is not a contribution, it is not subject to the Act's contribution limits. Nor would interest charged on the loan be a contribution to the Fazio Committee, except to the extent that the interest exceeded the commercially reasonable rate prevailing when the loan was made. 11 CFR 100.7(a)(1)(i)(D). (Date Issued: December 4, 1980; Length: 3 pages)

**AO 1980-131: Application of Contribution and Expenditure Limits to Committees Supporting New Party Candidate**

Because neither the National Unity Campaign for John Anderson nor the National Unity Campaign 441a(d) Committee qualifies as the national committee of a political party, neither committee may:

1. Receive contributions of up to \$20,000 from individuals (2 U.S.C. §441a(a)(1)(B)); or
2. Make coordinated party expenditures on behalf of the Anderson campaign. §441a(d).

Neither committee qualifies as the national committee of a political party because, at this time, neither one has demonstrated that its activity on a national level is such that it may be regarded as a national committee under the Act. Neither one has: nominated candidates for other federal office; conducted voter registration and get-out-the-vote drives; provided speakers; organized volunteer workers; publicized issues of importance to the party and its adherents throughout the United States; or held a national convention.

Rather than functioning as national party committees, the Anderson committees have operated as single-candidate committees active exclusively on behalf of the Presidential campaign of John Anderson and his running mate Patrick Lucey. Moreover, the Anderson 441a(d) Committee does not qualify as the national committee of the National Unity Campaign because it is not responsible for the daily activity of the National Unity Campaign. Nor is it identified as a national committee in the bylaws of the National Unity Campaign.

Because neither committee qualified as the national committee of a political party, the Commission did not decide whether either one was a "political party" under the Act. (Date Issued: November 20, 1980; Length: 5 pages)

**AO 1980-132: Contributions from Partnership with One Corporate Member**

Contributions made by Multivisions, a partnership with one corporate partner, to the primary and general election campaigns of Alaskans for Gruening do not constitute prohibited corporate contributions because Multivisions did not attribute any portion of the contributions to the corporate member. When making a contribution, Multivisions could choose to attribute a contribution to only certain individual partners as long as:

1. The contributing partners' respective profits were reduced (or their losses increased) by the exact amount of the portion of the contribution attributed to them;
2. The profits (or losses) of only the contributing partners were affected;
3. The contributions did not affect the corporate member's share of profits (or losses);
4. The portion of the contribution attributed to each individual partner did not exceed his or her contribution limits (2 U.S.C. §437f and 11 CFR 110.1(e)(2)); and
5. The contributions were reported pursuant to 2 U.S.C. §434. Issued: December 12, 1980; Length: 2 pages)

**AO 1980-133: Solicitation to Labor PAC  
Through Checkoff from  
Membership Dues**

The Central States Joint Board International Union of Allied, Novelty and Production Workers, AFL-CIO (the Joint Board) may not use a procedure it proposed for soliciting contributions to its separate segregated fund.

Under the Joint Board's proposed solicitation plan, individual members of the local affiliates would be asked to make voluntary contributions by designating a portion of their monthly dues to the fund without increasing total dues required. Donors would have the option of not contributing any portion of their dues to the separate segregated fund, in which case they would still pay the full amount of dues. Commission Regulations explicitly prohibit the plan because, in effect, it would result in a transfer of funds from the local affiliate's general treasury to the separate segregated fund. 11 CFR 114.5(a)(1) and 114.5 (b). (Date Issued: December 22, 1980; Length: 2 pages)

**AO 1980-134: Application of Contribution  
Limits to Independent Senate  
Campaign**

If Senator Lowell Weicker campaigns for re-election in 1982 as an independent, rather than as a Republican candidate, his principal campaign committee, Weicker '82 Committee (the Committee), may:

1. Accept up to \$1,000 from an individual for the primary election and up to \$1,000 from the same individual for the general election; and
2. Accept contributions for both the primary and general election campaigns prior to the primary election. All contributions for the general election must, however, be so designated. Moreover, the Committee must use an acceptable accounting method to distinguish between primary and general election contributions and may have to return general election contributions if Senator Weicker does not campaign in that election.

If Senator Weicker campaigns as a minor or new

party candidate (i.e., a candidate "without nomination by a major party") instead of as an independent, the same contribution limits will apply.

As an independent or as a minor or new party candidate, Senator Weicker may select one of three primary election dates provided by FEC Regulations. See 11 CFR 100.2 (c)(4)(i), (ii) and (iii).

The Commission did not decide on any separate issues that may arise if Senator Weicker changes his current Republican filing status after he qualifies for the ballot under Connecticut law. (Date Issued: December 22, 1980; Length: 3 pages)

**AO 1980-135: Payments Made by Corporation  
to Indemnify Staff of its  
Separate Segregated Fund  
Against Legal Liability**

Payments made by the Raytheon Company (the Corporation) to indemnify corporate officers and employees against any legal liability (e.g., fines, judgments or settlements) incurred in connection with activities of the Corporation's separate segregated fund (the Committee) are permissible. Such payments constitute expenses of administering the Committee rather than prohibited corporate contributions. 2 U.S.C. §§431(8)(B)(vi) and 441b(b)(2)(C); 11 CFR 114.11(b). (Date Issued: December 22, 1980; Length: 2 pages)

**AO 1980-138: Senator-Elect's Use of Excess  
Campaign Funds for Transition  
Expenses, Winding Down Costs  
and Living Expenses**

Senator-elect Frank H. Murkowski could use excess campaign funds of his 1980 Senatorial campaign to pay for his transition expenses (e.g., travel between Alaska and Washington, D.C., moving his family to Washington and maintaining a transition office between November 5, 1980, and the date he was sworn in as a U.S. Senator). The Act and Commission Regulations permit a candidate or individual to use excess



campaign funds for "ordinary and necessary expenses" incidental to his/her duties as a federal officeholder. 2 U.S.C. §439a and 11 CFR 113. Although Mr. Murkowski had not yet been sworn in as a U.S. Senator, he nevertheless could use excess campaign funds in these ways because federal officeholder is defined as "an individual elected to or serving in the office of . . . Senator . . . ." 11 CFR 113.1(c). The Senator-elect's principal campaign committee could also use the excess funds to pay costs of winding down his campaign (e.g., office rental, postage, staff salaries and telephone costs) because campaign committees have wide discretion in determining how campaign funds may be spent in winding down a campaign. The campaign committee, however, had to report these costs pursuant to 2 U.S.C. §434.

Mr. Murkowski could not, however, use the excess funds to pay his living expenses or those of his family during the transition period since these were not incidental to his election but rather were "personal expenses." Only those federal officeholders who were members of Congress when the 1979 Amendments to the Act were passed on January 8, 1980, could use excess campaign funds for such personal expenses. 11 CFR 113.1(c). (Date Issued: December 22, 1980; Length: 3 pages)

# Appendix 12 FEC Federal Register Notices, 1980

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Notice*	Title	Federal Register Publication Date	Citation
1980-1	Notice of Designation of Official to Receive Presidential Primary Candidate Certification of Inactive Status	1/22/80	45 <i>Fed. Reg.</i> 4999
1980-2	Draft Regulations to Implement 1979 Amend- ments to the Federal Election Campaign Act (Published for comment)	1/23/80	45 <i>Fed. Reg.</i> 5546
1980-3	Notice to Committees Filing Year-End Reports	1/28/80	45 <i>Fed. Reg.</i> 6475
1980-4	Presidential Election Cam- paign Fund; Presidential Primary Matching Fund (FEC prescribes proposed regulations)	2/12/80	45 <i>Fed. Reg.</i> 9559
1980-5	Filing Date for Pennsylvania Special General Election	2/28/80	45 <i>Fed. Reg.</i> 13411
1980-6	Contributions to and Expenditures by Delegates to National Nominating Conventions (Draft regula- tions published for comment)	3/3/80	45 <i>Fed. Reg.</i> 13766
1980-7	Opinion and Regulation Index Supplements	3/3/80	45 <i>Fed. Reg.</i> 13816
1980-8	Amendments to Federal Election Campaign Act of 1971 (Transmittal of regulations to Congress)	3/7/80	45 <i>Fed. Reg.</i> 15080

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\*This appendix does not include *Federal Register* notices of Commission meetings published under the Government in the Sunshine Act.

Notice*	Title	Federal Register Publication Date	Citation
1980-9	Multicandidate Political Committees; Index (Notice of publication)	3/19/80	45 <i>Fed. Reg.</i> 17633
1980-10	Amendments to the Federal Election Campaign Act of 1971 (Announcement of effective date for regulations implementing 1979 Amendments to the FECA)	4/1/80	45 <i>Fed. Reg.</i> 21211
1980-11	Technical Amendments and Corrections (Technical revisions to Commission regulations)	4/1/80	45 <i>Fed. Reg.</i> 21209
1980-12	Funding and Sponsorship of Federal Candidate Debates (Announcement of effective date for new regulations)	4/1/80	45 <i>Fed. Reg.</i> 21210
1980-13	Federal Candidate Debates Funding and Sponsorship; Federal Election Campaign Act Amendments of 1979 Regulations; Corrections	4/8/80	45 <i>Fed. Reg.</i> 23642
1980-14	Presidential Election Campaign Fund; Presidential Primary Matching Fund (Transmittal of regulations to Congress governing suspension of matching fund eligibility)	4/15/80	45 <i>Fed. Reg.</i> 25378
1980-15	Filing Date for West Virginia Special General Election	4/17/80	45 <i>Fed. Reg.</i> 26131

Notice*	Title	Federal Register Publication Date	Citation
1980-16	Rulemaking Petition; Notice of Availability (Requested by the Democratic National Committee and the Democratic Senatorial Campaign Committee to require specified notice on all solicitations for contributions by political committees conducting negative campaigns)	4/21/80	45 <i>Fed. Reg.</i> 26819
1980-17	11 CFR Part 110 Amendments to Federal Election Campaign Act of 1971; Correction (Reflects deletion of 11 CFR 110.7(b)(5) from the 1979 Amendments)	4/23/80	45 <i>Fed. Reg.</i> 27435
1980-18	11 CFR Part 4 Public Records and the Freedom of Information Act (Final rule)	5/13/80	45 <i>Fed. Reg.</i> 31291
1980-19	11 CFR Part 5 Access to Public Disclosure Division Documents (Final rule)	5/13/80	45 <i>Fed. Reg.</i> 31292
1980-20	11 CFR, Subchapter E, Parts 9001-9007, 9009 Presidential Election Campaign Fund: General Election Financing (Notice of proposed rulemaking)	5/15/80	45 <i>Fed. Reg.</i> 32003
1980-21	11 CFR, Parts 100 and 110 Contributions to and Expenditures by Delegates to National Nominating Conventions (Transmittal of regulations to Congress)	5/23/80	45 <i>Fed. Reg.</i> 34865

Notice*	Title	Federal Register Publication Date	Citation
1980-22	Public Financing of Presidential General Election Campaigns (Transmittal of regula- tions to Congress)	6/27/80	45 <i>Fed. Reg.</i> 43371
1980-23	Federal Election Com- mission Opinion and Regulation Index (Notice of availability)	6/24/80	45 <i>Fed. Reg.</i> 42369
1980-24	Suspension of Primary Fund Payments (Announcement of effec- tive date for regulations)	7/3/80	45 <i>Fed. Reg.</i> 45257
1980-25	Filing Dates for Michigan Special Primary and General Elections	7/17/80	45 <i>Fed. Reg.</i> 47919
1980-26	11 CFR, Parts 100 and 110 Contributions to and Expenditures by Delegates to National Nominating Conventions (Notice of final rule- making)	8/7/80	45 <i>Fed. Reg.</i> 52356
1980-27	11 CFR, Chapter 1 Nonpartisan Communica- tions by Corporations or Labor Organizations (Notice of proposed rulemaking)	8/25/80	45 <i>Fed. Reg.</i> 56349
1980-28	11 CFR, Parts 100, 106, 110, 140-146 and 9001- 9007 Public Financing of Presidential General Elec- tion Campaigns (Effective date confirmation)	9/5/80	45 <i>Fed. Reg.</i> 58820

Notice*	Title	Federal Register Publication Date	Citation
1980-29	Public Records; Indexes to State- ments and Reports (Notice of availability)	10/9/80	45 <i>Fed. Reg.</i> 67148
1980-30	11 CFR Part 112 Advisory Opinion Requests, Barring of Withdrawals (Notice of proposed rulemaking)	10/24/80	45 <i>Fed. Reg.</i> 70474
1980-31	Negative Campaigns (Denial of rulemaking petition)	10/24/80	45 <i>Fed. Reg.</i> 70568

## **A Index: Names and Addresses of Candidates**

Sorted by type of office sought (President, U.S. Senator, U.S. Representative), and alphabetically by last name or by State/Congressional district.

## **B Index: Names and Addresses of Committees**

Includes name of connected organization, name of treasurer, committee ID number, notation if it is "qualified" as a multicandidate committee, and filing frequency. This index can be sorted alphabetically by committee name, by committee ID number, and by type (Presidential, Senate, House, party, nonparty).

## **C Index: Disclosure Documents Filed by Political Committees**

Includes, for each committee, its name, ID number, list of each document filed (name of report, period receipts, period disbursements, coverage dates, number of pages and microfilm location), total gross receipts and disbursements, and number of pages.

## **D Index: Index of Political Committee Contributions to and Expenditures for Candidates**

Includes, for each committee, its name, ID number, name of connected organization, notation if it is "qualified" as a multicandidate committee, and a listing of all Federal candidates supported, together with total aggregate contributions to or expenditures on behalf of each candidate (1977-78 or 1979-80). In the case of party committees, coordinated party expenditures (Section 441a(d)) are listed in place of independent expenditures.

## **E Index: Index of Candidates and Supporting Committees**

Includes for each candidate the following:

1. Candidate name, district/State, party affiliation and candidate ID number.
2. Listing of all documents filed by the candidate (type, coverage dates, period receipts,

period disbursements, number of pages, microfilm location).

3. Listing of all documents filed by the principal campaign committee (see C Index for explanation).
4. Listing of all documents filed by other authorized committees of the candidate.
5. Listing of all committees (other than those authorized by the candidate) forwarding contributions to the candidate, the principal campaign committee, or an authorized committee, and the aggregate total of such contributions given to date. This listing also identifies committees making expenditures on behalf of the candidate or party committees making coordinated party expenditures (Section 441a(d)), including the aggregate total spent to date.
6. Listing of all persons or unauthorized single candidate committees filing reports indicating they made independent expenditures on behalf of the candidate.
7. Listing of all persons or committees filing unauthorized delegate reports.
8. Listing of all corporations or labor organizations filing reports of communication costs on behalf of the candidate.
9. Listing of all unauthorized single candidate committees registering support for or against a candidate. The listing also identifies the committee's receipts and disbursements for the report period covered.

## **G Index: Index of Itemized Transactions for Each Candidate and Political Committee**

Identifies the amount of itemized receipt and disbursement transactions, the report on which the transactions were disclosed and the microfilm location of the transactions. Five categories are represented:

1. Individual transactions, including individual contributions and loan activity.
2. Selected loan and loan repayment transactions, including loans from banks.
3. Unregistered political organization transactions, that is, contributions to candi-

dates from organizations which are not registered under the election law.

4. Corporate refund/rebate transactions with itemized receipts showing refunds of deposits.
5. Transactions among registered candidates/committees which indicate transfers and loan activity.

#### **H Index: Index of Presidential Candidates and Supporting Committees**

Similar to the E Index, but lists party and non-party contributions as reported by the candidate's authorized campaign committees.

#### **Y Index: Special Inquiry**

This immediate access system permits direct video displays or printouts of selected information in the disclosure data base. It consists of approximately 30 separate programs which may be used to locate, retrieve or display individual items or categories of information. An example is the *Text* search capability. By indicating a word or phrase, the computer searches and lists all political committee titles that include the word or phrase.

Another example is the *Treasurer's Name* search capability. By indicating the last name of a person, the computer searches and lists all political committee treasurers with the same last name.

#### **Other Indexes**

In addition to the above indexes, which are available on request, the Commission produces other types of computer indexes on a periodic basis (e.g., an index of communication costs). These periodic indexes are available in the Public Records Office for inspection and copying.



# Appendix 14

## Assistance Available from the FEC

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### General Assistance

Candidates, committees and the public may obtain information and materials (including publications listed below) from the FEC's Office of Public Communications. Contact the Commission in Washington, D.C., at 523-4068 or call toll free, 800/424-9530.

### Advisory Opinions

For questions relating to the application of the law to a specific, factual situation, any person may request an advisory opinion in writing. Requests for opinions and the opinions themselves are made public. A requesting person who in good faith acts in accordance with the advisory opinion will not be subject to any penalties with regard to the activity in question. 2 U.S.C. Section 437f(c)(2).

### Publications

- *The Federal Election Campaign Act*
- FEC Regulations
- Registration Forms
- Reporting Forms
- *Campaign Guide for Congressional Candidates and Committees*
- *FEC House and Senate Bookkeeping Manual*
- *Guideline for Presentation in Good Order*
- *The FEC Record*, a monthly newsletter
- *Record Supplement for State and Local Party Organizations*
- *Record Supplement: Summary of 1979 Amendments to the Federal Election Campaign Act*
- *The Annual Report*
- *The FEC and the Federal Campaign Finance Law*, a brochure for the general public

### Public Records Office

This office makes available to the public the documents listed below. Documents may be inspected at the Commission, purchased or copied (10 cents per page for copies from microfilm and 5 cents per page for copies from paper files).\*

- Reports and statements filed by Federal candidates and committees (1972-present)
- FEC Disclosure Reports
  - *FEC Reports on Financial Activity and Disclosure Series* (published indexes which consolidate and summarize data taken from the financial disclosure reports)
  - Daily updated computer printouts of various FEC indexes, as available
  - Index of Independent Expenditures
  - Index of Multicandidate Political Committees
  - Index of all Registered Political Committees
  - Index of all Federal Candidates
  - Index of Political Committees and Their Sponsors
  - Index of Sponsors and Their Political Committees
- *Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing* (applies to Presidential primary candidates only)
- *Index to Advisory Opinions*
- *Campaign Finance and Federal Election Bibliography*
- MURs (closed compliance actions and index)
- Audits (GAO 1972-74, FEC 1975-present)
- Court cases (*Buckley v. Valeo*, etc.)
- Presidential matching fund certifications
- Presidential and Vice Presidential personal financial disclosure statements filed under the Ethics in Government Act
- Information on contributions submitted by Presidential candidates to establish eligibility for primary matching funds
- General information (newspaper articles, studies on campaign finance by other organizations, informational handouts)
- Commission information (Commission memoranda, Commission meeting agendas and agenda items, minutes of meetings, newsletters, directives, bulletins, certifications of closed meetings, general distribution memoranda)

\* Anyone using such documents is reminded, however, of the election law's requirement that any information copied from reports and statements may not be sold or used by any person for the purpose of soliciting contributions or for any

commercial purpose, other than using the name and address of any political committee to solicit contributions from such a committee. 2 U.S.C. Section 438(a)(4).

### Clearinghouse

The National Clearinghouse on Election Administration provides information to the public on the electoral process and publishes studies on election administration. For details, see Appendix 6.

### Commission Library

The Commission law library, part of the Office of General Counsel, is open to the public. The collection includes basic legal research tools plus materials dealing with political campaign finance, corporate and labor political activity and campaign finance reform. The library staff prepares an *Index to Advisory Opinions* and a *Campaign Finance and Federal Election Bibliography*, both available from the Public Records Office (see above).

In addition to a general reference section that includes the *Martindale-Hubbell Law Directory*, the Commission's library contains the resources outlined below.

**Book Collection.** The book collection contains election-related monographs and legal treatises with an emphasis on Federal civil procedures and administrative law and also includes legal research sets such as *American Jurisprudence 2d*, and *American Law Reports 2d, 3d and 4th*.

**Periodical Collection.** The collection includes *Congressional Quarterly Weekly Reports*, *National Journal Reports*, *Harvard Law Review* and the *Congressional Record*.

**Journal Article File.** The journal article file contains photocopies of pertinent law review articles and Library of Congress Congressional Research Service reports.

**Looseleaf Service.** The two most important looseleaf services housed in the library are: 1) *United States Law Week*, which is published by the Bureau of National Affairs (BNA) and includes recent Supreme Court and lower court decisions and 2) the *Federal Election Campaign Finance Guide*, published by Commerce Clearing

House (CCH). The library also subscribes to the *Standard Federal Tax Reporter* (CCH), *Fair Employment Practice Service* (BNA) and *Corporation Law Guide* (CCH).

**Code Section.** This section contains major code materials required by the legal staff, including the *United States Code*; *United States Code Annotated*; *United States Code Service*; *United States Code Congressional and Administrative News*; *Code of Federal Regulations*; and *Daily Federal Register*.

**Reporter Section.** The collection of law reporters includes the *U.S. Supreme Court Reports* (Official, West and Lawyer's Edition copies); *Federal Reporter 2d*; *Supreme Court Digest* (Lawyer's Edition); *Federal Rules Decisions*; *Federal Supplement*, U.S. App. D.C.; and the slip opinions of the U.S. Court of Appeals for the D.C. Circuit.

**Federal Election Commission Document Center.** This section includes administrative material generated by the Commission and legislative material bearing on the establishment and operation of the Commission. For example, the section includes legislative histories of the Federal Election Campaign Act, transcripts of Commission hearings on regulations and *Federal Register* notices.